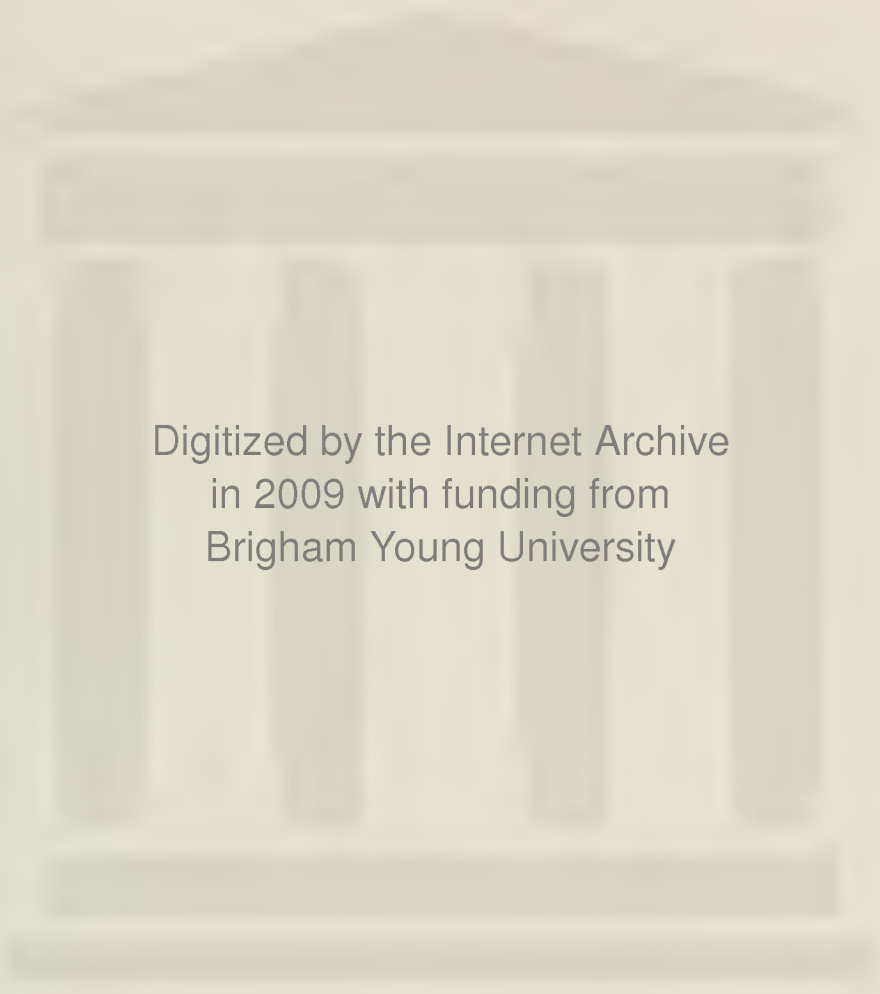




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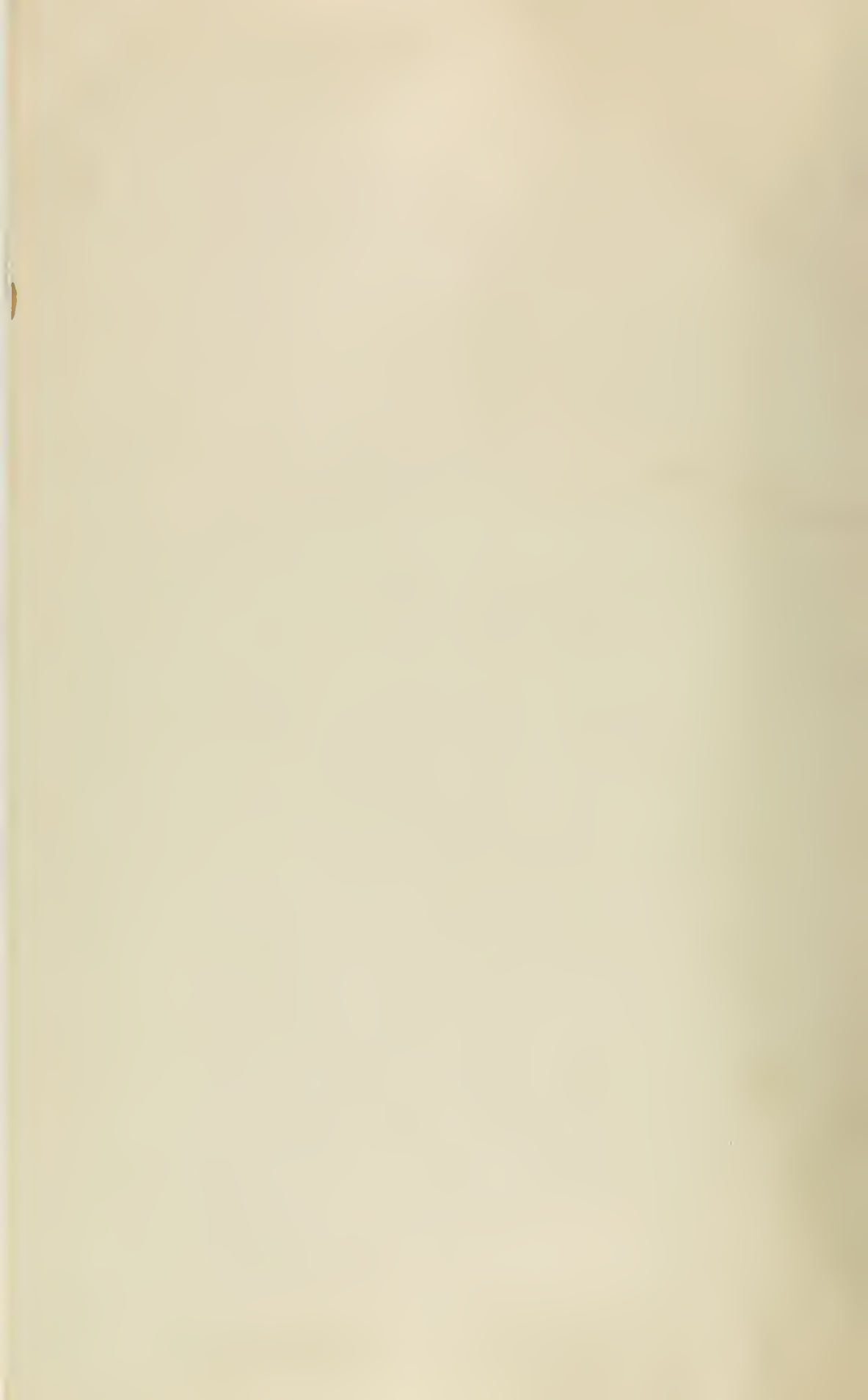








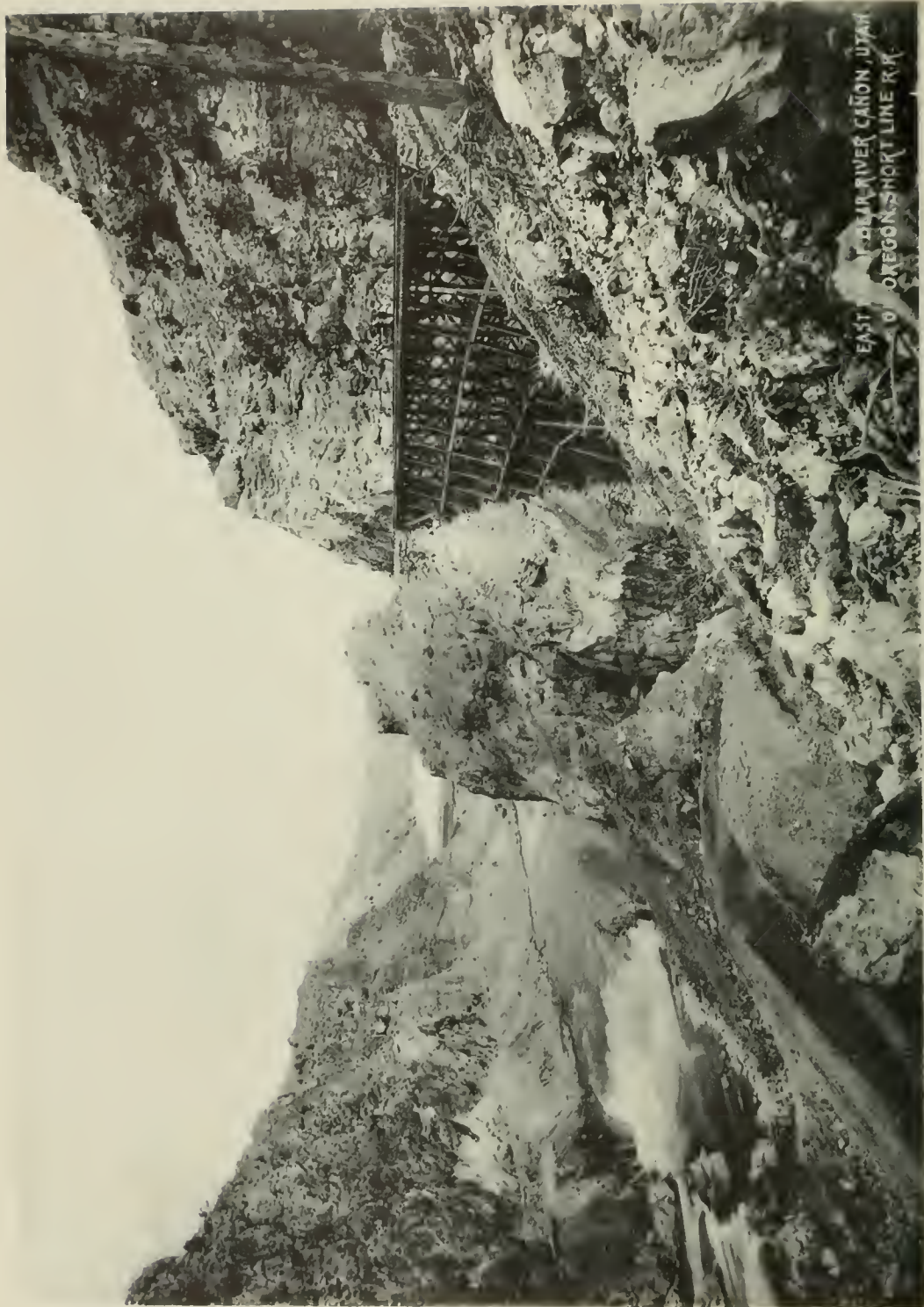




Jos. E. Bell  
April 20<sup>th</sup> 1899.







EAST END OF BEAR RIVER CANON, UTAH  
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EAST END OF BEAR RIVER CANON, UTAH. ON O. S. L. R. R.



# HISTORY OF UTAH

COMPRISING

PRELIMINARY CHAPTERS ON THE PREVIOUS HISTORY OF HER FOUNDERS, ACCOUNTS OF EARLY SPANISH AND AMERICAN EXPLORATIONS IN THE ROCKY MOUNTAIN REGION, THE ADVENT OF THE MORMON PIONEERS, THE ESTABLISHMENT AND DISSOLUTION OF THE PROVISIONAL GOVERNMENT OF THE STATE OF DESERET, AND THE SUBSEQUENT CREATION AND DEVELOPMENT OF THE TERRITORY.

IN FOUR VOLUMES.—VOL. III.

BY ORSON F. WHITNEY.

. . . Illustrated . . .

There is a history in all men's lives,  
Figuring the nature of the time deceased;  
The which observed, a man may prophesy  
With a near aim, of the main chance of things  
As yet not come to life; which in their seeds,  
And weak beginnings, lie intreasured.—*Shakespeare.*

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JANUARY, 1895.

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WILLIAM W. WHEATON  
BRICHAM Y. KING UNIVERSITY  
HOUSTON, TEXAS

## PREFACE.

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WITH the revision of the proof sheets of this volume, ends another part of the author's task of preparing a history of Utah—a task begun in the spring of 1890, and continued almost without intermission for a period of more than four years, during which the first and second volumes were given to the press, and the manuscript of the third volume practically completed. That it was not immediately published is due to causes more or less familiar to all; causes that need not be detailed in a community still suffering from the effects of the financial simoom that swept over the country about the time this enterprise was projected. The issuance of another portion of the work may be taken as an indication, if not of a business revival beginning to be felt, at least of a determination on the part of the History Company to keep faith with its subscribers.

This book brings up the general narrative to a point several months in advance of the time when that narrative began; covering a period of history from the death of Utah's founder to the issuance of the famous "Manifesto" suspending the practice of plural marriage. Necessarily the principal theme treated in these pages is "The Crusade;" as the movement by the Federal Government, under the Edmunds Act and the Edmunds-Tucker Law, for the suppression of polygamy in the Territories, is commonly called. How those laws came to be enacted, and how they were executed in Utah, Idaho and Arizona, is herein set forth, with all the important events incident to or clustering round that stirring epoch which has affected so materially the fortunes of our inter-mountain commonwealth.

In this, as in the preceding volumes, the author has striven to

be fair and accurate. If he has failed in either respect—the possibility of which is conceded—it has not been due to design. No pains have been spared to arrive at facts and clearly and candidly state them. The difficulty of writing contemporaneous history, especially if the writer has participated in the events that he records, is universally recognized, but is only to be fully appreciated by experience. In the present instance the difficulty was not lessened by the distracted social condition prevailing in Utah at the time this work was undertaken.

A fourth volume, not of general history, but of biographies and other special features, has been promised as a gift book to paid up subscribers for the other three. Work upon this supplemental volume has begun, and will be forwarded to an early finish.

THE AUTHOR.

SALT LAKE CITY,

January, 1898.

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# HISTORY OF UTAH.

## VOLUME THREE.

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1877-1879.

UTAH AFTER THE DEATH OF HER FOUNDER—HOW BRIGHAM YOUNG'S DEMISE AFFECTED MORMONISM—JOHN TAYLOR HIS SUCCESSOR—ANTECEDENTS AND INITIAL ACTS OF THE NEW LEADER—RECORD OF THE FEDERAL COURTS RESUMED—RAKING FOR SPARKS OF CRIME THE DEAD ASHES OF BYGONE DAYS—THE CLINTON CASE—THE COLLETT AND BURTON TRIALS—BOTH DEFENDANTS ACQUITTED—THE DEAD PAST ABANDONED—LIVING ISSUES TO THE FRONT.

CONTRARY to the expectations and predictions of many people, the death of Brigham Young did not sound the death-knell of Mormonism. While the event may not have strengthened and solidified the system, as was undoubtedly the case when Joseph Smith was killed, and would have been no less so had his successor died a martyr to the cause, it came, not as a sudden shock to the Saints, but as a sorrow which, though overwhelmingly heavy, had long been foreseen, and whose very weight, gradually descending, served to steady rather than unsettle the object upon which it rested.

Immediately upon the death of "the Mormon Moses"—as various writers have styled him—predictions were rife of the early realization of prophecies formerly uttered, to the effect that Mormonism would not survive the loss of its leading spirit. "When falls the Colosseum Rome shall fall, and when Rome falls, the world," was a proverb widely paraphrased with reference to the death of Brigham Young and the expected dissolution of the Mormon Church. All such predictions were foredoomed to failure, and as days length-

ened into weeks, and weeks into months, with no such mighty upheaval or ruin as had been foretold, gradually those prophecies were hushed, and such modified utterances as "Mormonism on trial," "Mormonism undergoing a test," etc., superseded the more positive and emphatic declarations as to its speedy and permanent collapse.

One factor in the predicted dissolution was the alleged existence of various rival claimants to the position vacated by the dead President. Factions and schisms were supposed to be imminent, and it was believed and hoped that under the influence of these and other disintegrating elements the Church would succumb and fall to pieces; that in the absence of the strong hand and mighty will of Brigham Young, the cohesive power of Mormonism would not be sufficient to save it, and that under the changed conditions incident to the opening of a new era, its *fiat finis* would be written.

What, therefore, was the surprise and disappointment of many when they learned that all their hopes and predictions were unfounded; that there would be no schism in the Church; that there were no rival claimants to its presidency; that priesthood and people were united upon the proposition as to who should lead them—who should succeed to the office and authority of their vanished Elijah, and be the Elisha of the hour.\*

It will be remembered that immediately after the death of Joseph Smith a controversy involving this very issue—the right of

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\* Something of the feeling that prevailed in the East at this time, particularly in certain ecclesiastical circles, is shown in the following excerpt of a discourse by Dr. Talmage in the Brooklyn Tabernacle. Said he: "Now my friends—now at the death of the Mormon chieftain, is the time for the United States Government to strike. They are less organized than they have been, and less than they will be. If these Mormons will not submit to authority, let so much of their rich lands be confiscated for the wants of the Government as will be sufficient for their subjugation. If the Government of the United States cannot stand the expense, let Salt Lake City pay for it. (Applause.) Turn their vast Temple into an arsenal. Set Phil Sheridan after them. (Immense applause.) Give him enough troops and he will teach all Utah that forty wives is thirty-nine too many. I call upon the Church of Jesus Christ to pray for the overthrow of this iniquity."





*Dr. Maughan*



succession to the presidency—arose in the Church at Nauvoo. Sidney Rigdon claimed the leadership by virtue of having been the Prophet's first counselor. The Twelve Apostles, with Brigham Young at their head, asserted their right to lead, their council being next in authority to that of the First Presidency, which death had dissolved. Various aspirants put forth pretensions, and several small factions were the result. The main controversy, however, was between Sidney Rigdon and the Twelve. It eventuated in favor of

A little later this same reverend gentleman wanted the Government to "thunder into" the Mormons "the seventh commandment, with shot and shell and cannon of the biggest bore."

The following poem, from the San Francisco *News-Letter*, appeared in the columns of that journal soon after the death of the founder of Utah :

## BRIGHAM YOUNG.

Dead is the Patriarch and Prophet—  
 Nay, smile not at his titles now :  
 You do not hold them good—what of it?  
 Leave the dead laurels on his brow ;  
 For there are those who have revered him,  
 Whose firm belief from every taint of mortal weakness cleared him  
 Respect at least their grief.

What though we thought him self-deluded  
 In many things that he has done?  
 Shall he for all time be denuded  
 Of honor he has fairly won?  
 The waste which he has filled with flowers  
 Sings in his praise ;  
 The usefulness we reckon but by hours  
 Lasts till the end of days.

We sneer at things which he held holy ;  
 Are we then certain of the fight?  
 Is there no truth but in us solely—  
 Can we alone be right ?  
 It may be—but who knows the morrow ?  
 Faith may be strong,  
 And yet the strongest may find to his sorrow  
 That he alone is wrong.

the latter, the great body of the Mormon people following Brigham Young and his fellow Apostles, and accepting him as the divinely appointed successor to Joseph.\*

It was this precedent that was followed now that Brigham Young had passed away. The First Presidency had again been dissolved; there was no council in authority over the Twelve Apostles; and with John Taylor at their head they at once stepped forward to assume their proper place as the presiding authority of the Church. President Young's counselors—John W. Young and Daniel H. Wells—who, though Apostles, were not members of the Twelve, were sustained by and associated with them as their counselors. The personnel of the Apostolic Council at this time was as follows: John Taylor, Wilford Woodruff, Orson Hyde, Orson Pratt, Charles C. Rich, Lorenzo Snow, Erastus Snow, Franklin D. Richards, George Q. Cannon, Brigham Young, Joseph F. Smith and Albert Carrington.

It was Tuesday, September 4th, 1877, two days after the funeral of President Young, that ten of these Apostles—two of their number being absent in Europe—met with their counselors in solemn conclave at Salt Lake City and sustained John Taylor as their standing President. This action, which was by unanimous vote, was accompanied by another of like unanimity, to the effect that the Twelve Apostles were the presiding council and authority in the Church, and they then and there assumed the functions of that presidency. An epistle signed by those present was forthwith issued "to the Latter-day Saints in all the world." It commented upon the sad event

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\* Joseph Smith had said at Kirtland: "The Twelve are not subject to any other than the First Presidency, viz: myself, Sidney Rigdon and Frederick G. Williams, who are now my counselors, and *where I am not, there is no First Presidency over the Twelve.*" Said Brigham Young, at Nauvoo: "Here are the Twelve, appointed by the finger of God, who hold the keys of the Priesthood and the authority to set in order and regulate the Church in all the world. Here is Elder Amasa Lyman [who had succeeded William Law and was a counselor to Joseph] and Elder Sidney Rigdon; they were counselors in the First Presidency, and they are counselors to the Twelve still, if they keep their places; but if either wishes to act as 'spokesman' for the Prophet Joseph, he must go behind the veil where Joseph is."



*S M Molen*



which had lately befallen the Church, informed its members of the action taken by the Apostles in council, and gave such instructions to the priesthood and the people as were deemed necessary.

The two absent Apostles—Orson Pratt and Joseph F. Smith—being sent for, sailed from Liverpool on September 12th, and on the evening of the 27th arrived at Salt Lake City. Under date of October 1st, they published a supplemental epistle, announcing their concurrence in the action taken by their associates. That action was unanimously confirmed by the Church at its next general conference, which convened at Salt Lake City on the 6th of October.

John Taylor, the man to whom the Latter-day Saints now looked for leadership and spiritual guidance, was by birth an Englishman, but had spent the greater part of his life upon American soil. He was born at Milnthorpe, near Windemere—"the queen of English lakes"—in the county of Westmoreland, on the 1st of November, 1808. His father, James Taylor, was a government exciseman, and his mother, Agnes Taylor, a descendant of the celebrated Richard Whittington, who was thrice Lord Mayor of London. At fourteen years of age young Taylor was apprenticed to a cooper in Liverpool, and subsequently learned the turner's trade at Penrith in Cumberland. At this time his father was living on a small estate bequeathed to him by an uncle, in the town of Hale, Westmoreland. It was in that locality that his son first attended school. Though of a jovial disposition, a vein of religious sentiment ran through the nature of the boy. In infancy he had been baptized into the Church of England, but when about sixteen he joined the Methodists—believing them to have more spiritual light than the established church—and a year later was acting as a local preacher of that persuasion.

About this time he became imbued with the idea that it was in his destiny to "go to America to preach the Gospel." Of this land he then knew nothing, except what he had learned at school. Several years afterward his father emigrated with his family to Canada, leaving John, the eldest living scion of the house, to settle up their affairs and follow him across the sea. The son carried out the

wishes of the sire, and about the year 1832 sailed for America, rejoining his parents in Toronto, Upper Canada. He there became a Methodist preacher. Though not highly educated, he was a great reader, and had acquired an extensive fund of general information. A talented writer, an eloquent speaker, he was well versed in history, sacred and profane, and was a skilled debater. He had a dignified mien and manner, was courageous and independent in spirit, and withal a man of pure life and unshaken integrity. It was while living at Toronto that he became acquainted with and identified himself with Mormonism, being one of many converts made by Apostle Parley P. Pratt in Upper Canada. His baptism into the Church of Jesus Christ of Latter-Day Saints occurred in the year 1836. Three years previously he had married Miss Leonora Cannon, daughter of Captain George Cannon, of Peel, Isle of Man, and aunt to George Q. Cannon, who was then a mere lad, not yet connected with the Mormon cause. Mrs. Taylor also espoused the new faith, and removed with her husband to Kirtland, Ohio, the headquarters of the Church, in the latter part of 1837. Many of the events of Elder Taylor's subsequent career—including his call to the Apostleship, his labors in the British Mission, his all but consummated murder in Carthage Jail, his emigration to the West, with various incidents of his life in the Rocky Mountain region—have been touched upon heretofore.

He was now in his sixty-ninth year, his hair and beard were of snowy whiteness, but his form, which was tall and nobly proportioned, was firm and erect, and he moved with stately and even elastic tread. Though the exuberance of youth was past, he was still a strong man, with a brave heart and an iron will, who stepped to the front, at the behest of his brother Apostles, to bear the burden of presidential authority in Mormondom. John Taylor was not a Brigham Young in genius, but he was every whit as firm and fearless, and unquestionably the man for the hour. A new era was opening upon Utah, and the era which produced and prospered the career of Brigham Young was fast passing away.

John Taylor's initial act of public importance, after the death of



his predecessor and prior to the reorganization of the First Presidency, was to superintend, as the senior of the Twelve Apostles, the laying of the corner stones of the Logan Temple. The ceremony took place on September 17th, 1877. Eleven days later the corner stones of the Salt Lake Assembly Hall were likewise laid under his direction. Both these stately edifices, projected during the administration of President Young, Apostle Taylor lived to see completed and dedicated.

The summer and fall of 1877 found Judge Michael Schaeffer still occupying the chair of Chief Justice and presiding over the Third Judicial District of the Territory. Judges Emerson and Boreman continued to be his associate magistrates. Sumner Howard held the office of United States District Attorney—though he was about to be succeeded by Hon. Philip T. Van Zile—and William Nelson was still United States Marshal.\*

Of these, Judge Boreman and Marshal Nelson were pronounced Anti-Mormons. Judge Schaeffer was conservative in spirit, though he was not accused or even suspected of entertaining any particular friendship for the Mormons. Attorney Howard, though friendly toward them at the first, proved to be a double-dealing character, and at the close of his term of office was very unpopular with both Mormons and Gentiles. Perhaps the fairest and most independent official among them was Judge Philip H. Emerson, who, whatever his mistakes may have been, undoubtedly strove to mete out equal and impartial justice to all. In a divided community this is no easy task, and that he succeeded so well in Utah at that time speaks loudly in his praise. Mr. Van Zile, who, like Judge Emerson, was from the State of Michigan, was an able and energetic official, but will always be classed among the radicals of his party.

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\* Colonel Nelson, who became one of the editors of the Salt Lake *Tribune*, went out of office about the same time as Mr. Howard. The next incumbent of the United States Marshalship was Colonel Michael Shaughnessey, who arrived at Salt Lake City April 1st, 1878. With him came "General" Butler, a bluff but kind-hearted old veteran who was for several years the efficient Warden of the Penitentiary. U. S. Attorney Van Zile took the oath of office on the 15th of March of the same year.

The year 1877 was notable for the hostile feeling prevailing against the Mormon people in every part of the Union. The trial and execution of John D. Lee, with all the dramatic and sensational concomitants, preceded and supplemented by a flood of falsehood sent broadcast by newspaper libelers of the Jerome B. Stillson type,\* had awakened a widespread sentiment of hatred against the whole community.† This caused much satisfaction among the enemies of the Mormons, it being an object for which they had long been laboring. The death of such men as Lee, however guilty of the great crime for which he suffered, was less desired by them than the destruction of the Mormon Church. This fact was not only patent to the general public; it was all but openly avowed by the Anti-Mormons themselves.

It would be manifestly unjust to include all the Gentiles of Utah in the Anti-Mormon category, and impute to them the motives which actuated the bitter and implacable foes of the dominant Church. That many non-Mormons were high-minded and honorable people, who simply desired to see crime punished, the guilty brought to justice and the innocent vindicated, is beyond question. The reverse is true of others, whose aim was to foment strife and keep up an agitation against Mormonism to subserve ulterior ends. Nevertheless, many of the agitators were sincere Mormon-haters, prejudiced against polygamy and what they called priestcraft, and having real or imaginary grievances against certain individuals in the Church, upon whom they wished to wreak vengeance.

Not content with the issue of the Lee trial, though vastly pleased with its general effect upon the country, the class in question instigated the prosecution of several prominent Mormons, for crimes alleged to have been committed in the early days of the Territory. Their evident purpose was to "keep the pot boiling" which the Mountain Meadows case had set to simmering, with a view to impli-

\* See footnote to page 824, Vol. II.

† The author, who was then traveling in the Eastern States, has reason to remember the bitter feeling prevalent at the time.

ating, if possible, the Mormon leaders, and securing their imprisonment or execution. Another object was to procure special proscriptive legislation, such as Congress finally enacted against the Latter-day Saints. The desperate straits to which their opponents were reduced at this time is shown in the antiquated and vague character of the cases fished up from the depths of the past and used as a basis for these prosecutions.

The subject first proceeded against, not so much on his own account, as to induce him to give information that he was supposed to possess, implicating others "higher in authority," was Dr. Jeter Clinton, for many years Police Justice at Salt Lake City. He had been indicted by the Grand Jury of the Third District Court for the crime of murder, alleged to have been committed about fifteen years previously. The person he was charged with killing was John Banks, whose death from wounds received during "the Morrisite war" has been noted.\*

Dr. Clinton was arrested at his home in Tooele, on the 19th of July, 1877, Deputy U. S. Marshal Crowe serving the warrant and conveying his prisoner the same evening to the Penitentiary. Early in August an effort was made by the Doctor's friends to have him released on bail, he being in very poor health, and the severe treatment to which he was subjected by the U. S. Marshal endangering his life. Attestation as to his feeble condition was made by Doctors J. M. Benedict and Allan Fowler—the latter a non-Mormon—and Judge Schaeffer was asked by the defendant's attorneys to issue an order for his liberation. The Judge expressed his belief that the circumstances of the case rendered it very proper that bail should be given, and also his willingness to grant a motion to that effect, if the District Attorney did not object. That official did object, however, and the sick man remained in confinement. One day later—August 4th—Attorney Howard consented to a proposition to remove Dr. Clinton from the Penitentiary to the Salt Lake County Jail, where he could be given more comfortable quarters and receive better treatment during

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\* See pages 57 and 768, Volume II.

his illness. The change was made the same day, and the prisoner's health immediately began to improve. Nothing came of the attempt to fasten guilt upon him, and within a few weeks he was given his liberty.\*

Having regained his health and freedom, Dr. Clinton, on October 22nd, instituted legal proceedings against U. S. Marshal Nelson for false imprisonment and maltreatment, suing that official for damages in the sum of twenty-five thousand dollars. The case was tried in the District Court on the 7th of November, and the plaintiff there testified as to the treatment received by him while at the Penitentiary. His statement was to the effect that on the first night of his imprisonment he was placed in a contrivance called "the sweat-box," used as an instrument for punishing refractory prisoners. It was a cage composed of iron and wood. There he was exposed to a fierce south wind and to clouds of dust whirled into his narrow place of confinement. He was next taken to an upper room, having a low sloping roof, with nothing but the bare shingles to shelter him from the heat of the sun. His lower limbs were shackled, so that he was unable to dress or undress himself; the room was without ventilation, and the bedding filthy beyond description. At this time he was suffering from an acute disease of the kidneys and spleen, and medicine that he solicited for his relief was denied him. Under these circumstances Marshal Nelson had taken him out riding in his carriage and told him that "matters would be made right" with him if he would divulge information criminating some of the authorities of the Mormon Church. The only other witness examined was Dr. J. M. Benedict, who testified that he had visited the plaintiff in the room by him described, and had found him suffering severely from the disease mentioned.

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\*The proceeding against Dr. Clinton was finally disposed of in April, 1879. The day for the trial having arrived, U. S. Attorney Van Zile stated to the Court that he had made a careful examination of the proofs for the prosecution and was convinced that he would not be able to convict the defendant. On his motion, therefore, the case was dismissed.

The defense offered no evidence in rebuttal, but moved that the case be non-suited, on the ground that the Penitentiary was a proper place for the Marshal to confine indicted prisoners. Judge Schaeffer granted the motion for a non-suit, stating in effect that, considering the nature of the charge against Dr. Clinton, he did not think the Marshal had exceeded his duty in his treatment of the prisoner.\*

Meantime another prosecution for murder had been instituted, the trial of which was to take place in the First District, before Associate Justice Emerson. It was the case of the People *vs.* Sylvanus Collett, who was charged with participation in what was known as the Aiken murder, said to have been committed in the year 1857. No effort was made by those who conducted the prosecution to throw the blame of the alleged bloody deed upon the Mormon Church. The hypothesis adopted was that those who committed the crime were actuated by motives of plunder. At the same time, the U. S. Attorney, Mr. Van Zile, undertook to cast some reflection upon the Church by appealing to the jurors who were about to listen to the testimony in the case to not allow "the obligations imposed by any religious organization" to influence them in the finding of a verdict.

The main facts in relation to the Aiken murder—if such a murder ever occurred—are as follows: In the fall of 1857—the time of the invasion by Johnston's army—a party of five or six men, including two brothers named John and Thomas Aiken, entered Utah from the West. They were *en route* from California to the Eastern States. This Territory was then under martial law; the Government troops were on our eastern border, and the people were much excited over the prospect of war. The Aiken party, having no passports, were taken into custody and prevented from proceeding eastward.

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\* Said the *Deseret News*: "We would be loth to suppose the opinion general that it is not unduly harsh or severe to expose an aged, and, at that time, ailing gentleman, in an open cage, during a whole night, to a powerful wind-storm; to subsequently place him in irons and confine him in a badly ventilated room, in stifling heat, and deny him medicine to relieve his pains; and all to get him to tell something to criminate somebody else. \*

\* \* Were the Judge himself a sufferer instead of the adjudicator of this *mild regime*, his opinion would doubtless turn a sudden somersault."

The arrest took place in Box Elder County and was made by a portion of the militia commanded by Colonel Chauncey W. West. The prisoners were conveyed to Ogden. Whether or not they were there released is uncertain. They were eventually set at liberty, and permitted to travel southward with a view to returning to California. Reaching Lehi, one of their number—a man named Chapman—chose to remain and become a citizen of that place. Another—if there were really six in the party—also separated from his companions about the same time. The remaining four arrived at Nephi, in charge of several guides, employed by themselves. The day after their departure from that place, two of the party—John Aiken and a man named Tuck—returned wounded and bleeding, and after having their injuries dressed, procured a conveyance and started for Salt Lake City. Nothing more was heard of them, nor of their two comrades with whom they went south, and it was rumored that they had all been murdered, and that their murderers were the men whom they had employed to pilot them through the country. Included in the escort, it was said, were Orrin Porter Rockwell and Sylvanus Collett, both of whom were eventually indicted, and the latter tried for complicity in the alleged crime. Rockwell's death, on the 9th of June, 1878, a few months before the Collett case came to trial, was all that prevented his being arraigned as a co-defendant.\*

The trial of the Collett case took place at Provo, beginning on the 8th of October. Judge Emerson presided, and U. S. Attorney Van Zile, assisted by Judge J. G. Sutherland and Mr. S. H. Lewis,

\* Several well known citizens were indicted about this time for the Potter and Robinson murders, the latter of which was related at length in the preceding volume. The Potter case was one in which Ike Potter, a notorious horsethief and bad character in general, had been arrested with two confederates, Wilson and Walker, and placed in jail at Coalville. In attempting to escape, Potter and Wilson were killed by their guards. Walker escaped, found his way to Camp Douglas, and made affidavit that his companions had been murdered. Judge Titus—for it was in his day that the event occurred—caused several parties to be arrested, but they escaped, and it was not until about ten years later that the matter was revived. Nothing came of it the second time, nor of the attempt to fasten the Robinson murder upon the persons arrested during Mr. Van Zile's tenure of office. He himself moved for the dismissal of the indictments.



*Alex Robertson*





conducted the prosecution. The defense was represented by Messrs. Tilford and Hagan, of Salt Lake City, and W. N. Dusenberry and John B. Milner, of Provo. The jury was composed as follows: Asa S. Hawley, Benjamin Carter, William O. Creer, Alexander Robertson, Joseph Rogers, John Sidwell, Abram Noe, John Meldrum, Edwin R. Burdick, Charles Conrad, Stanley P. Davis, and Charles Brewerton.

The Prosecuting Attorney stated to the jury that he proposed to prove that John Aiken was killed, that the killing was unlawful, and was done by the defendant. He then briefly recited what purported to be an account of the crime. It was to the effect that four of the Aiken party, after their arrest in Northern Utah, were escorted to Nephi, where some arrangement was made to "put them out of the way;" that Rockwell and Collett went to the Sevier River for that purpose; that two of the party escaped and returned wounded to Nephi; that they afterwards started for Salt Lake, but were intercepted and murdered at Willow Springs, and that Collett was one of the murderers.\* It was then that Mr. Van Zile appealed to the jury to not allow any religious bias to influence their verdict.

Numerous witnesses were examined on both sides, the principal one for the prosecution being William Skeen, of Plain City, Weber County, who stated that he had heard Collett relate how the Aiken party were escorted from north to south and delivered over to Rockwell, himself and others, with instructions to continue the escort and "make away with them"; how they went, as directed, and while on the Sevier, or on Chicken Creek, set upon the party, as they were seated around their fire singing, killed two of them, and wounded the two others, who returned to Nephi: how the escort

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\* Bill Hickman's "confession,"—page 129—states that the man Buck, whom he admits having killed near the Hot Springs, north of Salt Lake City, in the winter of 1857-8, "was the last one of the Aiken party." John Aiken's companion, said to have been killed with him at Willow Springs, near Nephi, bore a similar name—Tuck—which Hickman may have changed to Buck. But which account of the killing—if there was such a killing—is correct? Hickman was not one of those accused of the Aiken murder.

also returned, put up at Willow Springs, and when the two survivors came along, killed them with shot guns. Joseph Skeen, father of William, testified that the defendant had told him of the murder of the Aiken party by himself and three others, and that he (Collett) admitted that he gave the signal for the attack and fired the first shot. The Skeens stated that they were members of the Mormon Church, and friendly to the defendant.

Timothy B. Foote, another witness for the prosecution, stated that he kept a hotel at Nephi in 1857; that he there saw the Aiken party and their escort, including Rockwell and Collett; that the Aikens had a good outfit and said they were going to California; that the day after they left Nephi, Tuck and John Aiken returned wounded, and that he cared for them. They then started for Salt Lake City. About a year later the witness heard that two dead men had been found in Deep Springs, twelve miles north of Nephi, and he went with others to the spot and hooked out the bodies, which were very much decomposed and unrecognizable. He did not remember who were with him, the location of the Springs, or where the bodies were buried. On cross-examination the witness admitted that he was subject to "crazy spells," and had been informed and believed that he was once crazy for three days.

Guy Foote, son of the last named witness, testified to the arrival of the Aiken party at Nephi, and to their staying at his father's house. Tom Aiken had a money belt full of twenty dollar gold pieces. The belt was ripped and Mrs. Foote stitched it for the owner. He saw four men start southward in a wagon, at night, and afterwards saw the two wounded men return. Later, Rockwell and the defendant were seen by him driving some horses and mules northward.

Reuben Down, who lived with the Footes in 1857, also remembered seeing the Aiken party and their escort at Nephi, but he knew none of them except Rockwell. He saw the wounded men return, and on the same day that they started north, Rockwell and his party went in the same direction. The two men had no money, and





*John Spiers*



*Mary Anne Winfield Spiere*



offered a watch to Mr. Foote in payment, but he persuaded them to give him a pistol instead.

Mrs. Cazier, of Nephi, remembered the arrival and departure of the Aiken party and their escort; also the return of the two wounded men from the south, and their departure for the north. She heard some one say to Rockwell's party on their return to Nephi: "You have made a bad job of it, for two of them came in wounded."

Alice Robinson, likewise a resident of Nephi, testified something to the same effect.

Benjamin H. Johnson said that on the morning after the departure of the two wounded men from Nephi, he traveled northward and followed the track of a light wagon through the snow, until it reached Willow Creek. There the track left the road and he followed it to a herd house, where he saw men's tracks to and from the house and to three different springs, one a mile distant. The witness stood beside one spring and saw bubbles arising therefrom. He followed the wagon track back to the main road, where it turned south and he traced it no farther.

The testimony of the other witnesses for the prosecution was unimportant.

That side having rested, Judge Tilford stated the case for the defense. He referred to the remarkable nature of the proceeding, in which the defendant had been arrested on a charge of murder after a lapse of twenty-one years. The prosecution and the defense had both experienced difficulty in gathering testimony, but the former had had all the power of the Government to aid them, while the defendant was a poor man, with a family to support, and without the same amount of influence and means to assist him in his search. The defense proposed to show that the prosecution had failed to prove the death of the persons alleged to have been murdered; that the color, race or sex of deceased persons could not be detected after lying in water for a year; that many of the witnesses for the prosecution had infamous reputations, and finally that an alibi could be

proved for the defendant, who was in the Salmon River country at the time of the alleged murder. Witnesses for the defense then took the stand.

Mrs. Martha J. Coray stated that she lived about fifty-five rods from the springs mentioned by the witness Johnson, and that the water of those springs was pure. If they had been situated as he described, one of them would have been immediately in front of her house.

Alonzo W. Rhodes said that the springs referred to were surrounded with grass and tules, so that the water could not be seen. They had native fish in them, and would occasionally bubble from the bottom.

Drs. Benedict, Leach and Pike, medical experts, stated that dead bodies thrown into a deep spring and left there for ten or twelve months, could not possibly be taken out entire. Some of the bones might be found, but they would not be together. The presence of fish in the water would materially aid in the dissolution.

James Pexton, a blacksmith, denied that he had ever made for Timothy Foote a grappling hook, as had been alleged.

Mrs. Foote, wife of Timothy B. Foote, and step-mother to Guy Foote, testified that she had charge of her husband's hotel at Nephi in 1857. The Aiken party remained there one night. She was not asked by anyone to stitch a belt belonging to one of the party, nor did she see a belt of the kind described or any gold coin taken from it.

The defense attempted to introduce testimony showing that Timothy B. Foote was insane and had sought to commit suicide about a year before the trial, but the prosecution objected and the court sustained the objection.

Henry Goldsborough, Charles Sperry, James Pexton, Matthew Boulger and Richard Peay testified that they were acquainted with Guy Foote, and that he bore a bad reputation among his neighbors. They would not believe him on oath.

John Spiers, L. W. Shurtliff, John Draney, Charles Neal and



William Geddes testified to the same effect regarding William Skeen, the main witness for the prosecution.\*

Then came the testimony regarding the alibi claimed for the defendant. This was given by Thomas Smith, Richard B. Margetts, James Harker and the accused himself. It was to the effect that as late in the fall of 1857 as the 28th of October, Sylvanus Collett was at Limhi, above the forks of Salmon River, four hundred miles from Salt Lake City, and five hundred miles from Nephi. On the date given he had started from Limhi for Salt Lake City in company with the witness Harker and others. Their wagons were loaded with fish and other freight. Harker testified that snow storms were encountered, mountains crossed, and that progress was slow and difficult. It was late in November when they reached Salt Lake, where Harker and the defendant separated.

Collett stated that after reaching this point—about December 1st—he remained one night and then started for Lehi, where he had a wife and child. The journey thither, as he traveled with oxen, required two days. He stayed at Lehi one day and on the next set out for Salt Lake, intending to join a command in Echo Canyon. Reaching the city he was retained by Bryant Stringham to carry express. He was thus engaged for eight or ten days, going to Tooele and other places, and did not return to Lehi until the middle of December. The defendant denied confessing to William or Joseph Skeen any thing in relation to the Aiken affair, and declared that he was not at Nephi in the fall of 1857 and took no part in the crime alleged to have been committed.

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\*The defense took the ground that William Skeen and his father, Joseph Skeen, were actuated by feelings of hatred toward Collett, on account of the killing of their relative, David Skeen, in 1862. William, it was said, charged Sheriff Ricks with shooting his brother, but suspected Collett of complicity therein. After failing to secure the conviction of Ricks—See Chapter XXVII., Volume II.—it was alleged that he swore to have revenge on Collett. Skeen, however, denied these allegations. The character borne by William Skeen was shown by the publication of an extract from the record of the Probate Court of Weber County, wherein, on April 22nd, 1869, he was convicted of grand larceny.

The opening argument was made by Judge Sutherland on Monday morning, October 14th. During his address he threw a cloud over one of the principal witnesses for the prosecution—Timothy B. Foote—by declaring that he believed, from the testimony given, that that witness had as much to do with the murder as the prisoner at the bar. He claimed that it had been proven that Collett was at Nephi with the Aiken party, and that the alleged alibi did not hold good.

Judge Dusenberry, for the defense, contended that no proof had been adduced to show that Collett was ever in Juab County. Timothy Foote had so declared, but Judge Sutherland had “laid that old man on the shelf.”

Judge Tilford followed in an eloquent and masterly argument. He reminded the jury that only one of the indicted parties was on trial; Porter Rockwell, the other, having gone to his long account. He held that it devolved upon the prosecution to establish the following propositions: 1st, the death; 2nd, that it was the result of the criminal acts of others; 3rd, that the death was caused by gun-shot wounds; 4th, that it was felonious and done maliciously; 5th, the participation of Collett. All this they had failed to do. He then paid his respects to the witnesses for the prosecution, showing how Timothy B. Foote's testimony was beclouded, not only because he was subject to insanity, but by the fact that counsel on the other side had branded him as a murderer; how Guy Foote had been proved to be “the most accomplished liar north of the Sevier River”; how the Skeens professed to love Collett as a brother, yet had gone about the Territory divulging the secret of an alleged confession and had come upon the witness stand to swear away that brother's life; how Joseph Skeen's interest in the matter was evidently the reputation of his son William and the hate of the whole Skeen family toward Collett; and how various other witnesses had manifested their inconsistency and falsity. He maintained that the *corpus delicti*—the essential fact of the crime—had not been proved. Even if the men were murdered at Willow Springs, the evidence against Rock-



George Spilsbury  
Age 73



well and his party was purely circumstantial ; and as for Collett, he was not there at all, he was hundreds of miles away.

U. S. Attorney Van Zile made the closing argument. He dwelt upon the testimony of Mrs. Cazier and Mrs. Robinson as proving the existence of a plot to kill John Aiken and his companion. He claimed that circumstantial evidence was sufficient to establish the *corpus delicti* and that the guilt of the prisoner had been overwhelmingly established.

It was now Wednesday, October 16th. At the close of Mr. Van Zile's address, Judge Emerson charged the jury in a fair and impartial manner, and after an absence of seven hours, they brought in a verdict of not guilty ; a result expected and approved by the public generally.

One more attempt was made to drag from the depths of bygone days the buried body of an alleged "Mormon murder," and the prosecuting officers of the Government, disheartened by their failures to resurrect anything more than a ghostly shadow of seeming crime, then turned their attention to living issues, resolved, for a time at least, to "let the dead past bury its dead. "

The case now in question was that of the People *vs.* Robert T. Burton, charged with the murder of Mrs. Bella Bowman during "the Morrisite war" in 1862. It appears that proceedings against General Burton, for the part alleged to have been played by him at the time of the surrender of the Morrisites to the Marshal's posse under his command, had begun as early as September, 1870, when the Grand Jury of the Third District Court returned an indictment charging him with killing Mrs. Bowman ; but before further steps were taken, the Englebrecht decision came, declaring illegal the Grand Jury which had found the indictment. That process was thus rendered void. Four years later another indictment was found, upon which, in August, 1876, General Burton was arrested and admitted to bail in the sum of twenty thousand dollars.

His case came to trial on February 20, 1879, before Chief Justice Schaeffer, at Salt Lake City. The jury, composed equally of Mor-

mons and non-Mormons, stood as follows: Ellsworth Daggett, Samuel H. Hill, James Crossley, Joseph Gorlinski, David Rees, Edward Butterfield, John R. Bennion, Henry Wagener, Ralph Jenkins, Perley Cutler, Patrick Phelan and John Cartwright. The prosecution was conducted by U. S. Attorney Van Zile and his assistant James H. Beatty. The counsel for the defendant were Messrs. Tilford and Hagan, J. G. Sutherland, Parley L. Williams and Warren N. Dusenberry.

The details of the Morrisite episode, upon which this prosecution was based, are already in the possession of the reader.\* The case was remarkable from the fact that the District Court proposed to try one of its own ex-officials for carrying out its own mandate, and that the chief witnesses used against the defendant had been convicted in this court of crime in connection with this very case.

The prosecution betrayed a feverish anxiety to fasten guilt upon the defendant—who was a prominent Mormon—and in its opening statement, made by Mr. Beatty, failed to make a fair and full presentation of the case to the jury. The assistant prosecutor said that on June 13, 1862, a large band of militia, commanded by General Burton, appeared upon the bench overlooking the Morrisite fort, on Weber River; that the besieged were summoned to surrender by a note carried into their camp by a boy; that in this note thirty minutes were given them in which to surrender; that the fight immediately commenced and continued for three days, after which a white flag was displayed by the Morrisites; that the militia, led by two men on horseback, then entered the fort; that Morris, the leader of the people who had surrendered, moved aside, telling all who would follow him through life and death to step toward him; that thereupon, as the crowd was following him, he was shot, and that Mrs. Bowman, one of his disciples, having made some disrespectful remark, was also shot dead. The prosecution intended to show that General Burton was the slayer of this woman, and that he slew her

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\* See pages 48 to 57, also pages 99 to 102, Vol. II.

without provocation. Another woman, near Morris, had been killed previously.

It was claimed that Morris, when fired upon, had stepped aside, not to secure the arms which had been stacked near by, but with the expectation of receiving divine assistance. The prosecution, Mr. Beatty said, were firmly convinced of the guilt of the defendant, but only asked from the jury a judgment warranted by the evidence.

The witnesses examined for that side were James Bowman, the husband of the woman alleged to have been killed; Mrs. Mary Anderson, Mrs. Caroline Eliason, Joseph Warner, Mrs. Emma Just, Daniel Camomile, Thomas Williams, Jacob Johnson, Mrs. Anna Cardon, Christopher Sproat, William H. Hurst, Philip Hewitt, James Ashman, Abraham Taylor and Luther A. Burnham. All but Messrs. Camomile, Sproat, Hunt, Ashman and Burnham, who had been members of the Marshal's posse, and Mrs. Cardon, a visiting doctor at the fort, were, in June, 1862, connected with the Morrisite sect. The prosecution sought to prove that the killing of Morris and his friends was unwarrantable. They claimed that the fort had surrendered, that the arms of the prisoners had been stacked, that the militia—all or most of them—were at the time of the tragedy inside the enclosure, drawn up in lines "four or five deep," between the Morrisites and their arms. It was alleged that Mrs. Bowman was shot because she called General Burton "a murderer" after he had shot Morris. Daniel Camomile, an apostate Mormon, stated that the posse numbered five or six hundred men; that all, including himself, were in the fort standing between the Morrisites and their arms at the time of the killing, and that General Burton shot both Morris and Mrs. Bowman—the former because he said he would not give up and go to Salt Lake City, and because of his subsequent call to his disciples to follow him; the latter, because she denounced the officer as a murderer or something to that effect. According to this witness, General Burton said: "No person shall call me that and live." and forthwith fired upon her. Camomile thought that Burton also shot and wounded John Banks, and he averred that

either Burton or his aid, Judson Stoddard, shot and killed another woman, who had simply declared that she would die with her prophet.

The prosecution having rested, Judge Sutherland, in behalf of the defense, stated the case to the jury. He referred to the one-sided manner in which it had been presented by Mr. Beatty. Nothing had been said to the jury to inform them that General Burton went to the Morrisite fort as an officer of the law, acting under judicial orders. This was unjust. Such things would render the trial a persecution rather than a prosecution. The Morrisites were a rebellious people, who had violated and defied the law. The defendant was charged in this indictment with killing Mrs. Bella Bowman, and two other indictments had been found at the same time, charging him with the killing of Morris and Mrs. Swanee. It had not been and could not be proved that General Burton went from Salt Lake City with the intention of killing Mrs. Bowman; for he did not know that such a woman lived. There was no denying that he was at the Morrisite fort, and that Morris, Banks, Mrs. Bowman and Mrs. Swanee were killed after the entrance into the camp. But the facts did not show that they were murdered. General Burton, who was a humane man, slow to anger and averse to the shedding of blood, had made every effort to have the approaching difficulty settled in an amicable manner. He had entered the fort, after the surrender, not with his whole command, as had been alleged, but with twelve or fifteen men, and when he saw a general rush of the infuriated Morrisites for their arms, he ordered that they be stopped; a volley was fired by his men, and the two women were killed by accident. General Burton's acts had been reported to the court and to the Governor, and he had received commendation for his humane conduct.

Judge Sutherland having concluded his address, the examination of witnesses for the defense began. They were Hans O. Hanson, James Unsworth, Hans Okason, George T. Peay, John C. Thompson, Robert W. Burton, Thomas Abbott, Robert T. Burton the defendant, Robert Golding, William Brown, Thomas Jenkins,





*Thos. H. Kean.*



Mark Croxall, William Jones, William Blood, Wells Smith, William Beesley, Warren G. Child, E. A. Williams, Joseph G. Romney, Henry Coulam, William A. McMaster, Sr., Ammond Green, Myron B. Child, Thomas Marshall, E. D. Hoge, Zerubbabel Snow, Aurelius Miner, Theodore McKean and Nicholas Groesbeck. At the outset, copies of the following named documents were offered in evidence:

(1) The writ of *habeas corpus*, issued by order of Judge Kinney, dated May 22nd, 1862, commanding Joseph Morris, Richard Cook, John Banks and Peter Klemgaard to appear before the District court with two prisoners—William Jones and John Jensen—whom they unlawfully had in custody:

(2) Judge Kinney's order to Henry W. Lawrence, Territorial Marshal, in relation to the service of this writ;

(3) The return and affidavit of the Marshal's deputy, Judson L. Stoddard, regarding his treatment at the hands of the Morrisite leaders and their lawless and defiant attitude upon the service of said writ;

(4) The writ issued by order of Judge Kinney, and dated June 11th of the same year, commanding the Territorial Marshal to attach the bodies of the Morrisite leaders for contempt of court;

(5) The return of the Marshal's deputy, Robert T. Burton, stating, under date of June 18th, that he had duly served the writ of attachment and had the bodies of the Morrisite leaders before the court, two of them—Morris and Banks—having been killed on the 15th of June, in attempting a strong and armed resistance to the execution of said writ;

(6) The affidavits of Hans O. Hanson and Philo Allen, in relation to the unlawful detention by the Morrisites of Messrs. Jones and Jensen, for which cause the writ of *habeas corpus*, first mentioned, had been issued:

(7) The warrant sent out by order of Judge Kinney, on June 10th, for the arrest of the Morrisite leaders, with the return and report of Deputy Marshal Burton, dated June 16th and 18th, stating that he had succeeded by the aid of a strong military force in serv-

ing said warrant and arresting the said leaders, though two of them were dead—Joseph Morris, instantly killed on June 15th, and John Banks, mortally wounded, so that he died between one and two a. m. next day—as the result of the enforcement of the process.

The proclamation issued by Deputy Marshal Burton, demanding the surrender of the Morrisites, was also placed in evidence.

The testimony of the witnesses for the defense bore out the statement made by Judge Sutherland prior to their examination, and successfully rebutted the allegations of counsel and witnesses for the other side. It is due to General Burton that a portion of his testimony—which was corroborated by other statements—should here be inserted. It was as follows:

The first time I was called upon to serve these writs I declined. The Judge sent a second time and somewhat insisted on my going. I then requested a posse, thinking if an overwhelming force appeared, the writs would be served and complied with without bloodshed. A letter was written by me to the Governor, asking for a posse, which force was granted me, to the number of about 250 men, from this and Davis counties. We first encamped four miles south of Morris fort, on the 12th of June, 1862.

\* \* \* \* \*

About seven o'clock on the morning of the 13th, I sent Major Egan, Judson L. Stoddard and others with a letter to the leaders of the Morrisites. It was about half past eight o'clock when my force arrived opposite their camp. I met Stoddard a little before I arrived in its vicinity and heard how he had disposed of the communication. He stated that he had received no reply. I was under the impression that the people in the fort received the letter about eight o'clock. After some delay, waiting for an answer, I sent two men with a white flag close to the fort, having a bugle sounded also, but received no reply. At ten o'clock, no communication having come, I ordered Major Ladd to fire over the fort two shots; the first was fired at ten o'clock in the morning on the 13th of June, and struck on the other side of the fort; the second struck the plowed ground between us and the fort, and from there went into it. I thought that by firing over the fort they would be induced to surrender. I think I then sent a flag down, the firing from our camp having ceased. I heard their martial music, and the first firing of small arms came from the fort. This was perhaps twenty minutes after the first cannon shot. I then thought that they were determined not to surrender, and ordered Major Egan to go around the fort on one side and Major Andrew Cunningham on the other. Both detachments encountered a heavy fire before they got into position. The river was very high and I supposed that would prevent the escape of the prisoners on the north side. I think that here we encamped over night. I gave some instruction to my men, saying particularly that no prisoners should be allowed to escape, but that bloodshed should be avoided, and telling them to act on the defensive. Several of the Morrisites

came out and surrendered on the first day. From them I understood that no general surrender was contemplated, and that no force would be permitted to come near the fort. Major Ross was ordered to get a position as near as possible to an old wall or fence, where a pretty good breastwork was afforded. In taking this position they encountered heavy firing, and one man of our posse, Jared Smith, was killed. Our forces kept their positions during the day. Majors Egan and Cunningham are now dead. On the evening of the first day I communicated with Governor Fuller, and perhaps also with Judge Kinney. Governor Fuller's reply I have in my possession.\*

\* \* \* \* \*

I received his letter the following day. In my letter to the Governor as far as I remember, I alluded to the resistance that I had met, also to the death of one of my men, and gave a statement of my proceedings thus far. I sent my letter by courier. On the 14th I also received an additional gun, some ammunition and supplies. That day the firing from the fort commenced at four o'clock in the morning. My men did not reply much during the day; there was a heavy rain and they kept close to their entrenchments. In one or two instances, signals, as a cap or hat raised above the breastworks, were put up to attract the fire of the Morrisites, and I saw that they were closely on the watch, firing being immediately directed to these signals. On Saturday a number of persons came to my camp from the fort, among them women and children. Mrs. Cook went from our headquarters into the fort, trying to induce some of her friends to come to us and be protected. All the prisoners who came to our camp were well provided for. Sunday they again commenced firing. This day I paid more attention to the surroundings of the fort and was in different positions myself, accompanied by a bugler. The firing on my men who were unprotected was very galling. We improvised a kind of rolling breastwork by taking three wheels on axles and filling in the spokes with willows and then rolling them along the ground. This was a protection to my men and it seemed to have a good effect upon the Morrisites—perhaps they thought it was about to explode—at any rate it was very useful. At one time the command of Major Egan was in so dangerous a position that I ordered him to fall back, as the fire from the rifle pits was very sharp. His detachment numbered perhaps 100 men, and they were on the east side of the fort. Serving in the capacity of courier and aids to me I remember Joseph A. Young, also Mr. Golding and a young man named William H. Streeper.

Later in the day I determined to make a charge upon a house, ordering fifteen to twenty-five men under Lieutenant James Lewis to this duty. This attack was very rapid and was successful, one of the number, however, being killed.† This was between five and six o'clock. At seven p. m. the white flag was brought out, the bearer coming within speaking distance of me, and immediately all firing ceased. I had strictly ordered my men to withhold their fire whenever they saw any sign of surrender from the fort, or whenever any unarmed person appeared. A man named Brown carried the flag.

\* See page 55, Volume II, for this letter.

† Colonel Theodore McKean states that papers in his possession give the name of this man as J. P. Whiplin, of 1st Battalion, 3rd Regiment, Nauvoo Legion. Jared Smith, the first man killed in the militia, was one of the Enfield Rifles.

I told him that an unconditional surrender was required—the stacking of the arms and the surrender of the men bearing arms. He perhaps did not have authority to accept these conditions and returned. When I saw that they had complied with my terms and were stacking their arms, I sent word to Major Egan to stop firing. We desired to have the surrender complete that night. I immediately started toward the fort accompanied by Messrs. Stoddard, Croxall and Golding, all of us on horseback. I told the men behind the moving barricade to follow me; there were twelve men there, six armed and six unarmed; the latter moved the barricade. I sent Mr. Golding back to bring ten more; I entered the fort, passed the school house and came between the stacked arms and the people, we four horsemen being all together. I did not see any women in front of the Morrisite people. The men in the crowd were unarmed, a few of the arms being stacked but the greater part lying on the ground. I considered the surrender entirely genuine. I restricted the number of men who accompanied me, to save unpleasantness, as I feared a collision. I imperfectly saw that the schoolhouse was fortified inside and that there were arms there. I do not remember who spoke first, though I think it was Parsons. I did not know Morris, but slightly knew Cook, Banks, and Parsons. I think the first question was to me. It was, "What do you require?" I took the writ for contempt out of my pocket, perhaps I did not read it, but stated that I considered it my duty to take as prisoners all who had borne arms. It seems to me that some one inquired what was to be done with them. I replied that the law would determine that. Some one asked the privilege for Morris to speak to the people; I gave permission, saying that he was to be brief and caution them to be quiet. Morris stepped out about two paces, raised his hands and said in a very loud voice, "All who are willing to follow me, through life and death, come on." There was an almost universal response to his words, some calling "to arms," others, "aye, aye." The movement was towards me. I loudly called "halt," two or three times to Morris. I moved my horse a little, Morris still facing me. Seeing the imminent danger of myself and companions, I said to my men, "Stop the prisoners." I discharged my revolver twice at Morris, then wheeled right around, and saw my men with their guns cocked and the Morrisites rushing for their arms. When I again turned around I found the Morrisites had stopped, Morris had fallen, and Banks was close to the school house. My men now came rushing in from all directions. Major Egan's men from the outside of the fort commenced firing. I raised myself in my stirrups and called out in a loud voice, "stop firing." I did not see any women when I fired at Morris, and shot only at him. No woman addressed me, nor did I see one. Every shot I fired was aimed at Mr. Morris.

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I took one hundred and forty male prisoners but brought only ninety-four to Salt Lake City, the others being wounded or innocent of any resistance or participation in the trouble. There were eighty-four guns, twenty or twenty-five pistols, about the same number of sabres, and the same number of bayonets. My men reported that arms were found in the school house. About two-thirds of all the arms were loaded, and were discharged, I think, the next morning, in my camp before being sent to this city. Banks was not killed outright but died about two o'clock in the morning. I sent the bodies to Salt Lake City by Albert P. Dewey. We, with the posse, arrived here Tuesday evening,

the 17th. The prisoners were brought into court at that time, and some were liberated on their own recognizance, while others were kept in custody on the charge of murder.

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All my men were supposed to be armed, except the teamsters; there were 250 all told, 150 from Salt Lake and 100 from Davis County. I still think that the surrender was a sham. My opinion is that neither Morris nor Banks intended to surrender, but a part prevailed on them to make the sham they did. I have no other reason for so believing than the words spoken, and the attempt to regain the arms.

Both sides having rested, arguments of counsel began, Assistant District Attorney Beatty first addressing the jury. He was followed by Judge Tilford for the defense.

The speech of the latter was a masterly effort. He recounted the incidents leading up to the capture of Kington Fort and the death of Joseph Morris, and showed that the defendant, as an officer of the law, was justified in all that he did at that time; that he acted moderately, humanely and honorably, taking every possible precaution against the shedding of blood, and only at the last moment, when his own life and the lives of his men were in jeopardy, resorting of necessity to extreme measures. He also showed how witnesses for the prosecution—most of them Morrisites—had contradicted themselves and each other in their testimony,\* and expressed his convictions that one witness—Dan Camomile—had deliberately perjured himself in stating that the whole posse were inside the fort at the time Morris was killed, and that Mrs. Bowman was shot by the defendant, on calling him “a d——d blood-thirsty dog.” It had not been proved that the defendant shot Mrs. Bowman, who fell in the midst of the melee, killed by accident. In conclusion Judge Tilford said: “We demand his acquittal as due to the welfare of the Territory, the security of life, and the enforcement of right; we demand it as due to the court whose mandate placed him in the very peril that compelled the homicide; we demand it as due to the law whose process he was executing when resistance was offered; we demand it

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\* General Burton was informed, after the trial, that the Morrisite witnesses had been carefully rehearsed in the testimony they were to give in court, but their memories failed them; hence the conflicting versions of the affair at Kington Fort.

as due to humanity, whose noblest impulses are outraged by the prosecution of one whose only offense consisted in discharging his duty.”

The closing argument was made by U. S. Attorney Van Zile. It was the 5th of March when the case was given to the jury. Two days later they came into court and by their foreman, Joseph Gorkinski, presented a verdict of not guilty. The announcement was greeted with loud applause, and the defendant was overwhelmed with congratulations. To the general public, Mormons and Gentiles, the outcome was a satisfactory termination of an important and interesting trial.

The triumphant acquittal of General Burton, by a jury composed equally of Mormons and non-Mormons, marked a cessation of such vexatious proceedings. Doubtless one reason for the suspension of this ghoulish practice—this robbing of the graves of the past—in order to harass and annoy reputable citizens against whom no crime could be proved, was the failure in so many instances to secure convictions. Another reason was, that matters more pressing, cases involving living issues, now began to claim the attention of the public prosecutor.






Lina P. H. Young



## CHAPTER II.

1879-1881.

PROSECUTIONS FOR POLYGAMY—THE REYNOLDS CASE—THE ANTI-POLYGAMY LAW OF 1862 DECLARED CONSTITUTIONAL BY THE SUPREME COURT OF THE UNITED STATES—THE PRECURSOR OF A COMING CRUSADE—GEORGE REYNOLDS IN THE NEBRASKA AND UTAH PENITENTIARIES—THE MILES CASE—THE SPARK THAT KINDLED A CONFLAGRATION—THE ANTI-POLYGAMY SOCIETY—MORMON WOMEN PROTEST AGAINST MISREPRESENTATION BY THEIR GENTILE SISTERS—THE MILES TRIAL—DANIEL H. WELLS UPON THE WITNESS STAND—HE IS SENT TO PRISON FOR REFUSING TO REVEAL THE SECRETS OF THE ENDOWMENT HOUSE—GRAND POPULAR OVATION IN HIS HONOR—ELDER MILES CONVICTED—THE COURT OF LAST RESORT REVERSES THE DECISION AND REMANDS THE CASE FOR A NEW TRIAL—THE PROSECUTION ABANDONED.

 HE opening of the year 1879 brought with it a very important decision from the Supreme Court of the United States. It was the final decree in the celebrated Reynolds case, involving the constitutionality of the anti-polygamy law of 1862. This was the first effectual move made by the Federal Government against what the Gentiles termed "the Mormon power." Though the immediate result was not momentous in a general way, the defendant in the case and those dependent upon him being the only ones seriously affected, it nevertheless had an indirect bearing upon the fortunes of the whole Mormon community, foreshadowing as it did a radical change in the policy of the Government toward Utah, and constituting a precursor of the great crusade inaugurated under the Edmunds law. It is now time to fulfill a promise, previously made, respecting a fuller setting forth of this interesting subject—the Reynolds case.

Ever since the enactment of the anti-polygamy law, in 1862, the Mormon people and many others had considered it unconstitutional, being violative, as they believed, of one of the cardinal principles upon which the United States Government was founded,

the principle of religious liberty. This opinion was held by some of the leading statesmen and jurists of America. The reader need not be told that the Constitution, in its first amendment, declares: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Nor is it necessary to state to those who have followed this narrative to the present point, that at the time Congress created the law in question, plurality of wives was a portion of the Mormon religion, and had been proclaimed as such, at the seat of government, ten years previously; Apostle Orson Pratt, in the year 1852, having taken a special mission to the city of Washington for that purpose. Consequently this law was looked upon, especially by the Latter-day Saints, as unconstitutional and therefore void. They believed that such would be the decision of the court of last resort, as soon as a case involving the principle at issue should come fairly and squarely before that tribunal. So confident were they in relation to this matter that many leading Mormons, including President Young himself, repeatedly expressed the wish that a test case might be passed upon by the Supreme Court at Washington.

The local representatives of the Government, despairing of accomplishing much toward the extirpation of polygamy, as the law and public sentiment in Utah then stood, were no less desirous that such a case might be brought. In the summer of 1874 negotiations were opened between the Mormon authorities and the United States Attorney, Mr. Carey, and it was arranged that the case should be provided. Mr. Carey and his assistants were preparing at this very time to launch a series of prosecutions for polygamy against prominent Mormons, who, though it was known that they could not be legally convicted,—their polygamous relations being of older standing than the law under which it was proposed to prosecute them,—had nevertheless been singled out as targets for a vain though vigorous onslaught. The District Attorney agreed that if a test case were furnished, these proceedings should all be dropped. This circumstance no doubt expedited the subsequent arrangement. It was stipulated that the

defendant in the case should produce the evidence for his own indictment and conviction, and it was generally understood that the infliction of punishment in this instance would be waived. Only the first half of the arrangement was realized. The defendant in the test case, George Reynolds, supplied the evidence upon which he was convicted, but his action did not shield him from punishment; though it doubtless had the effect of mitigating the same. Such was the inception of the Reynolds case, which had its origin on the 23rd of October, 1874, when the first indictment was found therein.

Elder George Reynolds, the person selected to be the defendant in the celebrated case which bears his name, is at the present time—1896—numbered with the general authorities of the Mormon Church, being one of the First Seven Presidents of the Seventies. At the beginning of these proceedings, however, he was not so conspicuous a character, though a man of some repute among his people in an official and literary way. He had been the private secretary of President Brigham Young. An Englishman by birth, a native of the city of London, he had been a Mormon since May, 1856, and a resident of Utah since 1865. He was thirty-two years of age and the husband of two wives when he stepped to the front to become the defendant in this *causa celebre*. His first wife, Mary Ann Tuddenham, was married to him on the 22nd of July, 1865; his second wife, Amelia Jane Schofield, on the 3rd of August, 1874. These facts were communicated to the Grand Jury of the Third District at the September term of the last named year. The result was his indictment for polygamy, or, as the law styled his offense, bigamy, on the 23rd of October. Three days later he went before the District Court, surrendered himself a prisoner and asked to be admitted to bail. According to previous agreement between U. S. Attorney Carey and the defendant's counsel, J. G. Sutherland, the bond was fixed at twenty-five hundred dollars.

The trial took place in the spring of 1875, beginning on the 31st of March and ending on the 1st of April. Judge Emerson presided,

Messrs. Carey and Baskin prosecuted the case and Messrs. Sutherland, Bates and Snow defended it. The jury was composed of seven Mormons and five non-Mormons, namely, Joseph Siegel, Jesse West, George M. Ottinger, Albert W. Davis, William Naylor, DeWitt C. Thompson, Joseph Peck, S. F. Nuckolls, Samuel Bringhurst, M. B. Callahan, W. C. Morris and James McGuffey.

Among the witnesses was Mrs. Amelia J. Reynolds, the defendant's plural wife, who admitted the fact of their marriage on the 3rd of August, 1874. The ceremony, she stated, took place in the Endowment House at Salt Lake City, President Daniel H. Wells officiating. The latter confirmed this statement, which was also conceded by the defense. The Judge having charged the jury, they retired to their room, but returned in about half an hour with the following verdict:

SALT LAKE CITY,

April 1st, 1875.

We, the jury in the case of the People of the United States in the Territory of Utah *vs.* George Reynolds, indicted for polygamy, find a verdict of guilty, and recommend the prisoner to the mercy of the court.

SAMUEL BRINGHURST,

Foreman.

It was now discovered that the defendant, who had just been pronounced guilty, had not been arraigned before trial, and that the indictment had not been read to him. His counsel took advantage of this point, and moved an arrest of judgment and the setting aside of the verdict, preliminary to a motion for a new trial. The court granted the motion. Mr. Carey, though somewhat nonplussed, announced that he was ready to proceed immediately and re-try the case. This, however, was rendered unnecessary by the defendant, who waived the point and pleaded "Not guilty as charged in the indictment." Pending further proceedings Elder Reynolds was released in bonds of five thousand dollars. On the 10th of April the convicted man received his sentence, which was that he should be imprisoned in the Utah Penitentiary at hard labor for one year,

and pay a fine of three hundred dollars. An appeal was taken to the Supreme Court of the Territory, where, on the 19th of June, the decision of the District Court was reversed. The ground for reversal was the illegality of the Grand Jury which had found the indictment, it being composed of twenty-three instead of fifteen men, as required by law. Chief Justice Lowe by that time had arrived, and it was he, with Associate Justices Emerson and Boreman, who then composed the Supreme Court. Elder Reynolds was now released from his bonds.

During the progress and immediately after the close of the trial, the prosecution manifested considerable animus against the defendant. They even insisted that he be imprisoned pending his appeal to a higher court. Judge Emerson, however, would not yield to this demand. The reversal of the decision of the District Court served only to increase the bitterness of the prosecuting officers.

Elder Reynolds was again indicted in the fall of 1875, by a Grand Jury composed of seven Mormons and eight non-Mormons. The date of this indictment was October 30th. The witnesses upon whose testimony it was found were John and Mary Tuddenham, Daniel H. Wells, Amos K. Lucas and Arthur Pratt. The defendant was arrested on the 1st of November and was forthwith admitted to bail in the same sum as before. His second trial began on the 9th of December before Chief Justice Alexander White and the following named jurors: Henry Simons, foreman, Charles Read, Benjamin F. Dewey, Eli Ransohoff, Lucien Livingstone, Edward L. Butterfield, Samuel Woodward, Nathan J. Lang, Frank Cisler, Emanuel Kahn, John S. Barnes and George Hoggan. District Attorney Carey prosecuted, as before, and Messrs. Williams and Young and Sheeks and Rawlins were the attorneys for the defendant. An effort was made to have the indictment quashed on the ground of certain irregularities in the drawing and empaneling of the Grand Jury, but it was not successful. The defendant having pleaded not guilty to the charge of bigamy, the trial began. It had become evident by this time that the U. S. Attorney, under the stress of anti-Mormon influence, had departed from his design to try the case purely as a test

of the constitutionality of the law, and that it was the intention to fasten criminality upon the prisoner with a view to securing his punishment. Owing to this vindictive spirit, Mrs. Amelia J. Reynolds refused to appear as a witness, and was not found when the officers went in quest of her. The Court, however, permitted the prosecuting attorney to call the lawyers and other persons in attendance at the former trial, and accepted as evidence their testimony of what Mrs. Reynolds had stated at that time. The witnesses examined were John and Mary Tuddenham, Daniel H. Wells, Amos K. Lucas, John R. McBride, George R. Maxwell, Arthur Pratt, J. G. Sutherland, Hamilton Gamble, Orson Pratt, Sr., John Nicholson and John Sharp. The jury on the 21st of December found a verdict of guilty against the defendant, but recommended him to the mercy of the court. The judgment was that he be imprisoned at hard labor for a term of two years, and pay a fine of five hundred dollars. The defendant appealed to the Supreme Court of the Territory, where the case was heard on the 13th of June, 1876, Chief Justice Schaeffer then presiding. The decision of the lower court was unanimously affirmed.

As contemplated from the beginning an appeal was taken to the Supreme Court of the Nation, where, on the 14th of November, 1878, the case was argued, Messrs. G. W. Biddle, of Philadelphia, and Ben Sheeks, of Salt Lake City, appearing for the appellant, and Solicitor General Phillips for the Government. Two days were occupied by the arguments, and the case was then taken under advisement. The court's decision, which was unanimous, but for the non-concurrence of Associate Justice Field on a minor point, was delivered on the 6th of January, 1879. It was voiced by Chief Justice Waite. It confirmed the decisions of the lower courts, and declared constitutional the act of Congress making criminal the Mormon practice of plural marriage.

A few days after the delivery of the decision a notable interview occurred between President John Taylor, the head of the Mormon Church, and Colonel O. J. Hollister, U. S. Collector of Internal Rev-





*Robert Pistara*



enue for Utah, and correspondent of the New York *Tribune*. The meeting, which was solicited by Mr. Hollister, took place in the President's office at Salt Lake City, June 13, 1879. Besides the two principals, several prominent Mormons were present and took part in the conversation. Asked as to whether he took issue with Judge Waite's statement of the scope and effect of the amendment to the Constitution guaranteeing religious freedom, President Taylor answered in the affirmative. He then said:

PRESIDENT TAYLOR. A religious faith amounts to nothing unless we are permitted to carry it into effect. Congress and the Supreme Court are carrying out the same principles that were practised in the persecutions against the Huguenots in France, the Waldenses and Albigenses in Piedmont, the Non-conformists in England, and others who have been persecuted on account of their religion. \* \* \* They will allow us to think—what an unspeakable privilege that is—but they will not allow us the free exercise of that faith which the Constitution guarantees. Here is the injustice and the manifest breach of faith.

COLONEL HOLLISTER. Is it not true that marriage is the basis of society, that out of it spring the social relations, obligations and duties with which governments must necessarily concern themselves? And is it not therefore within the legitimate scope of the power of every civil government to determine whether marriage shall be polygamous or monogamous under its dominion?

PRES. T. I do not look upon it in that way. I consider that when the Constitution of the United States was framed and adopted, those high contracting parties did positively agree that they would not interfere with religious affairs. Now, if our marital relations are not religious, what is? This ordinance of marriage was a direct revelation to us through Joseph Smith the Prophet. \* \* \* You may not know it, but I know that this is a revelation from God and a command to His people, and therefore it is my religion. I do not believe that the Supreme Court of the United States nor the Congress of the United States has any right to interfere with my religious views, and in doing it they are violating their most sacred obligations.

COL. H. My idea of religion is this:—that man acknowledges, loves, reverences, worships and gives thanks to God; that constitutes religion. Worship may take various forms of expression, but where did it ever, how can it, take the form of marrying and raising families—either single or plural families?

PRES. T. Mr. Hollister, are you a believer in the Bible?

MR. PENROSE. Mr. Hollister's question is answered by the Bible, which plainly says that marriage is ordained of God, etc.

PRES. T. Now, Mr. Hollister, I have so far answered your questions, will you answer mine?

COL. H. In one sense I do. I believe that part of the Bible that my reason approves of.

PRES. T. It would not be of any use arguing with you on this subject then; but as my opinions are desired for the public, I will state that I believe in the Bible, and believing in it, I believe in those principles therein set forth.

COL. H. If marriage can be legitimately called religion, what human relation or pursuit may not be so called? And if everything is religion, and the state is prohibited from interfering with it, what place is there left for the state?

\* \* \* \* \*

MR. P. That is easily answered. When one's religion assumes to interfere with the rights and liberties of others.

PRES. T. Whose rights do we interfere with? That is a question I was going to ask you.

COL. H. I consider that you interfere with men's rights and women's rights and children's rights.

PRES. T. How can we interfere with men's rights or with women's rights if all enter into it voluntarily?

COL. H. I think it interferes with the rights of men and women, because when a man marries a second woman, some other man must do without any. \* \* \* You believe that Mormonism will be universally received, but polygamy cannot become universal, because the sexes are born in about equal numbers. How can a principle, not of universal applicability, be philosophically sound, or sound in any sense?

MR. P. What need of going out of Utah?

COL. H. If you are going to defend polygamy as a sound philosophical principle, I don't see how you can avoid going out of Utah.

MR. P. But we only practice it as a part of our religion.

COL. H. But if it is a true principle it must be of universal applicability.

\* \* \* \* \*

PRES. T. These theories are too visionary and too far in the future. It is well known that there are scores of thousands of women in these United States who cannot obtain husbands and the same also in England and other Christian countries. And furthermore, we regard the plural order of marriage as being voluntary, both on the part of the man and the woman. If there should be any disparity, as you refer to—if there should not be two wives for one man, why then he could not get them.

\* \* \* \* \*

COL. H. Viewed socially or philosophically, apart from all religious considerations, do you regard polygamy as worthy of perpetuation at the cost of perpetual antagonism between your people and their countrymen?

PRES. T. However we may respect the government and its institutions, I would respectfully say we are not the parties who produce this antagonism. \* \* \* Our revelation given in August, 1831, specifically states that if we keep the laws of God we need not break the laws of the land. Congress has since, by its act, placed us in antagonism to what we term an unconstitutional law, and it now becomes a question whether we should obey God or man.

COL. H. But in taking that position do you not set yourselves up as the judges of

the Constitution, whereas the laws (Sec. 709 R. S.) make the Supreme Court the judge of the constitutionality of the laws of Congress?

PRES. T. Without any interpretations from the Supreme Court, I take it that the words themselves are explicit on this point. \* \* \* When the Constitution says Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, we take it to mean what it says. Congress, indeed, can pass laws, and the Supreme Court can sanction those laws; but while they have the power, being in the majority, the justice of those laws is another matter.

COL. H. Viewed as above, do you regard polygamy as superior to monogamy as the form or law of marriage, and if so wherein?

PRES. T. I consider it altogether superior to the law of monogamy in a great many particulars. First, I base it upon the will and command of God both in ancient and modern times; second, I base it upon the natural results of monogamy. There is in all monogamic countries, the United States not excepted, a terrible state of things arising from the practice of monogamy, infanticide and fœticide prevailing to an alarming extent. \* \* \* Polygamy protects its offspring; monogamy does not. How many are there now in Washington, New York, Chicago, Philadelphia and other cities, that make it a practice to cohabit with other women, to whom children are born, the results of their adultery, whom they do not acknowledge, but who are turned out upon the streets to become waifs in the shape of newsboys, street-sweepers, etc., outcasts and pariahs of society, augmenting also the criminal classes and the paupers, leaving other people to provide for their illicit offspring! And it is not an infrequent thing for such children, while engaged sweeping the street crossings, to ask their own fathers for a penny, the child not knowing the father nor the father the child.

COL. H. Do you consider these evils the necessary concomitants of monogamy more than of polygamy?

PRES. T. These are the results of monogamy, whether necessary or not, and these are the evils associated with it. We acknowledge our children, we acknowledge our wives; we have no mistresses. We had no prostitution here until it was introduced by monogamy, and I am now told that these other diabolical deeds are following in its train. The courts have protected these people in their wicked practices. We repudiate all such things, and hence I consider that a system that will enable a man to carry out his professions, and that will enable him to acknowledge his wife or wives and acknowledge and provide for his children and wives, is much more honorable than that principle which violates its marital relations, and, whilst hypocritically professing to be true to its pledges, recklessly violates the same and tramples upon every principle of honor, which sits down and coolly and deliberately decides how many children shall be murdered and how many shall live. The one, Mr. Hollister, is a great deal better system than the other.

\* \* \* \* \*

You say you think it wise for the government to endeavor to suppress polygamy. I think they should first manifest their antagonism to the practice of infanticide and feticide and the prevailing prostitution, and instead of prosecuting and proscribing us, they should assist us in removing these contaminating influences from our borders.

Furthermore, while Great Britain is a monarchial government she can tolerate 180,000,000 of polygamists [in India] and throw around them the protecting ægis of the law, while the United States, a republican and professedly a free government, is enacting laws prosecuting and proscribing so small a number as 150,000 in her Territory.

\* \* \* \* \*

Polygamy is not a crime, *per se*; it was the action of Congress that made polygamy a crime. As before stated, the British government allows one hundred and eighty millions of their people to practice it, and by law, protects them in it. It is very unfortunate that our republican government cannot be as generous to its provinces as a monarchial government can to its colonies. \* \* \* \*

COL. H. If you persist in the future as in the past in this practice, what kind of an ultimate outcome do you anticipate? Could you not consistently surrender polygamy on the ground that there is no prospect of changing the opinion and law of the country against it, and that nullification of the laws is sure to result disastrously in the end to the nullifiers?

PRES. T. Not so much so as the nullification of the Constitution. \* \* \*

MR. MUSSER. I think the Lord could better answer that question.

COL. H. "The Lord" is a foreign power to this government, in the sense in which you constantly refer to Him.

PRES. T. I am afraid He is, and there lies the difficulty. When nations forsake God we cannot expect them to act wisely. In doing what they have done, they have opened the flood gates of discord to this nation which they cannot easily close. We are now proscribed, it will be others' turn next. Congress has assumed a most fearful responsibility in breaking down its Constitutional barrier. \* \* \* \*

COL. H. You hold, then, that your church possesses the oracles of heaven exclusively, and that the condemnation of polygamy by all Christian nations is without reason and wisdom, and contrary to the spirit of revelation?

PRES. T. We most assuredly do.

\* \* \* \* \*

COL. H. Is not, in fact, what you call revelation, the expression of the crystallized public sentiment of your people; and if a majority of them should desire to abandon polygamy, would what is called revelation deter them from doing so?

MR. CALDER. Mr. Colfax, when he was here, and as he was leaving, said to President Young, "Mr. Young, you say Joseph Smith had a revelation instituting polygamy; my advice to you is to get a revelation to do away with it."

COL. H. My idea of revelation is embodied in my question. In your case I look upon it as the crystallized expression of the highest wisdom of your people, speaking through your organ, the head of the Church.

\* \* \* \* \*

PRESIDENT JOSEPH F. SMITH. It is very unfair, Mr. Hollister, in you to even think that a people who have suffered as we have for our faith, having been driven five different times from our homes, and suffered even to martyrdom, should be insincere in our belief. Questions you have asked here repeatedly imply that we could get up revelations to suit ourselves.

\* \* \* \* \*

COL. H. What effect, on the whole, do you apprehend Chief Justice Waite's decision will have on the question?

PRES. T. I don't know that it will have any effect, except to unite us and confirm and strengthen us in our faith.

As soon as the nature of the decision against Elder Reynolds became known, an effort was made to have the case reopened, on the ground that the sentence rendered included "hard labor," which was in excess of the law and the authority of the judge to pronounce. The Supreme Court refused to set aside the verdict and order the proceedings quashed, but on the ensuing 5th of May it issued a supplemental order to the following effect: "That this cause be and the same is hereby remanded to the said Supreme Court [of Utah Territory] with instructions to cause the sentence of the District Court to be set aside, and a new one entered on the verdict in all respects like that before imposed, except so far as it requires the imprisonment to be at hard labor." A mammoth petition, signed by over thirty-two thousand citizens of Utah, was now forwarded to Washington, setting forth the fact that the defendant's was a test case, and asking for his pardon by the Executive. President Hayes heeded not the petition.

On the 14th of June Elder Reynolds was re-sentenced, and two days later, in custody of Deputy Marshals George A. Black and William T. Shaughnessy, set out for the State prison at Lincoln, Nebraska, whither he had been ordered by the Department of Justice. He remained at Lincoln twenty-five days—during which time he was given the position of book-keeper of the prison—and was then brought back to Utah.

Arriving at Salt Lake City on the 17th of July, he was at once conveyed to the Penitentiary, where he was held in confinement; serving out his full term, barring one hundred and forty-four days remitted on account of good behavior. He was kindly treated by Warden Butler and the guards, and spent much of his time in prison writing for the press and in teaching a school attended by the other convicts. His example and instructions had such a salutary effect

that the warden was wont to say: "Reynolds is worth more than all the guards in keeping order among the prisoners." Repeated efforts were made to secure his pardon, Delegate Cannon doing all in his power to obtain it, and Marshal Shaughnessy also interesting himself in the prisoner's behalf; but all in vain. The President was deaf to every appeal for clemency. The captive remained in prison until January, 1881, suffering the full penalty pronounced against him, except the payment of his fine, which was remitted.

In the interim between the delivery by the United States Supreme Court of its decision in the Reynolds case and the departure of the defendant for the Nebraska State prison, where he was temporarily confined, another noted polygamy trial occurred in Utah. Unlike the one last considered, it was not a test case in which the defendant voluntarily surrendered for trial and furnished the evidence which convicted him. It was a *bona fide* capture by the U. S. Marshal, on information lodged by certain persons, of an alleged violator of the anti-polygamy law, so recently declared constitutional. The individual in question was John H. Miles, a resident of St. George, Washington County, who, at the time of his arrest, was sojourning at Salt Lake City, where his offense was alleged to have been committed.

In various other respects the Miles case differed materially from the Reynolds case. Though in the former as in the latter it was the wife's testimony which convicted the husband, it transpired that Mrs. Miles was "a very willing witness," which was not so with Mrs. Reynolds—at least not in the sense here signified. Again, the issue of the Reynolds trial was the imprisonment of the defendant for a period of nearly two years, while in the other instance the defendant, though convicted, was not destined to pass even one day behind prison bars.

Though not without interest in itself, the Miles case was chiefly notable at the time of its occurrence from an incident that took place during the progress of the trial. It was the incarceration in the Penitentiary of Daniel H. Wells, Lieutenant-General of the Nauvoo





*John Ellison*



Legion, ex-Mayor of Salt Lake City, and until the death of Brigham Young, one of the First Presidency of the Mormon Church. The cause of his imprisonment, which was only for forty-eight hours, was alleged contempt of court, in refusing to reveal, upon the witness stand, the secrets of the Endowment House.\*

A supplemental incident was the mammoth ovation, as magnificent as it was sudden and spontaneous, with which the Mormon people greeted the venerable and distinguished captive on his emergence from prison.

Over and above these circumstances, however, the Miles case takes its place in history as the incipient cause of a general anti-polygamy agitation, which resulted in the enactment of the Edmunds law, and the denial to Utah's Delegate of his seat in Congress. It was the spark which kindled the conflagration that swept over all Mormondom during the latter part of the decade of "the eighties," and ended with the issuance, in October, 1890, of the famous "Manifesto," suspending the practice of plural marriage.

The case of the United States vs. John H. Miles came to trial in the spring of 1879, while Associate Justice Emerson, between the retirement of Chief Justice Schaeffer and the arrival of his successor, Chief Justice Hunter, was temporarily presiding in the Third Judicial District. The facts of the case from the beginning are as follows:

The defendant was arrested by the United States Marshal, at Salt Lake City, October 25, 1878, on a warrant charging him with bigamy, which meant, in his case, polygamy. The warrant was

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\*The Endowment House served the Latter-day Saints for many years in lieu of a Temple. Therein were performed sacred rites and ceremonies, such as baptisms, ordinations, marriages, etc., including vicarious work for the dead. It was regarded by the Saints as treacherous and reprehensible in the extreme for one who had "passed through the House" to expose its sacred though innocent mysteries. The edifice, a humble and unpretentious adobe building, stood upon the north-west corner of the Temple Block at Salt Lake City, and was in use after the Temples at St. George, Logan and Manti were finished and in operation, and till the great Salt Lake Temple, the pride and glory of Utah, was nearing completion. The Endowment House was taken down in 1890.

issued upon the affidavit of one Edward C. Brand, who, however, was a mere figure-head in the affair; the real complainant being Miss Caroline Owen Maile, alias Mrs. Caroline Owen Miles, who claimed to be the defendant's wife.

Mr. Miles was taken before U. S. Commissioner Sprague, where, after a partial examination, he was released under bonds in the sum of fifteen hundred dollars. Next morning—October 26th—and for several days ensuing, the examination continued, numerous witnesses being summoned to testify; and finally, on October 31st, it resulted in the defendant's being held to await the action of the Grand Jury. The witnesses at the examination were Mrs. Miles, the complainant; Angus M. Cannon, President of the Salt Lake Stake of Zion; Dora Young, Daniel H. Wells, Mr. and Mrs. John T. Caine, Jr., George Reynolds, James Jack, George F. Gibbs, Mrs. M. J. Foreman, Leo Dykes, Miss Eliza Foreman, President John Taylor, Miss Kate Connelly, M. L. Holland and Mrs. Amanda Cannon. The prosecution was conducted by U. S. Attorney Van Zile, and the defense by Messrs. Tilford, Hagan and Sutherland.

At an early stage in the proceedings before the Commissioner, Mrs. Miles was taken before Chief Justice Schaeffer—who was not yet out of office—on a writ of *habeas corpus*, it being alleged that she was unlawfully held or restrained by Mr. Miles and Mr. Angus M. Cannon. Those gentlemen, in their answer, disclaimed any right or intention to so hold or restrain her, and this phase of the matter was dropped.

The substance of the testimony upon which the Commissioner decided that there was probable cause to believe the defendant guilty of polygamy, was as follows. John Miles, while in his native England, had formed an attachment for Miss Carrie Owen, whom he met in the city of London. Leaving home, he followed the sea. She believed him dead. He landed in Australia, where he met some Mormon missionaries and embraced their faith. Coming to Utah, he settled in the southern part of the Territory. From there he wrote to Miss Owen a letter containing an offer of marriage. She accepted

it, but her letter of acceptance did not reach her lover, who, supposing she had relinquished him, engaged himself, several years later, to two young ladies at St. George. These were Misses Emily and Julia Spencer. Returning to England as a Mormon missionary, Mr. Miles met his former love and renewed his offer of marriage. She accepted, and in the fall of 1878 came with him to Utah. She stated that he promised he would give up the other girls if she would marry him, or at all events that he would make her his first wife; this being the condition upon which she had accompanied him to America. At Salt Lake City the party from abroad met the Misses Spencer, from St. George. Miss Owen, it seems, had agreed to an arrangement whereby these ladies were also to become the wives of Mr. Miles. He, being in a quandary, now decided to lay the matter before President Taylor. Accordingly the party proceeded to the President's office, and the head of the Church, having listened to their statements, informed them that the rule in relation to the baptism of families was to allow the principle of seniority to prevail,—that is, the father to be baptized first, the mother next, and then the children in the order of their ages, beginning with the eldest. The same principle applied to some extent in plural marriages, so that when a man married two or more wives simultaneously, the oldest woman should precede the others to the altar. In view of the complication that had arisen in this affair, however, President Taylor informed the Miles party that, so far as the Church was concerned, they were released from their engagements, and he advised them to release each other.

Soon after this interview, which was before the decision in the Reynolds case, John Miles married Miss Owen in the Endowment House, Daniel H. Wells performing the ceremony. On the same day and just prior to this marriage, he had taken to wife, it was alleged, Miss Emily Spencer, the elder of the two sisters. Mrs. Carrie Owen Miles did not assert that she had witnessed the marriage of her husband with Miss Spencer, but admitted that she had given her consent to it, and stated that she saw Emily at the Endowment

House on the day of her own marriage. She also averred that when she and the defendant were married, Counselor Wells, addressing Miles, said: "Your first wife ought to be present at this ceremony."

On the same evening a wedding reception in honor of Mr. Miles and his wife, was held at the residence of Elder Angus M. Cannon, where, it was alleged, Emily Spencer was repeatedly referred to as "Mrs. Miles." Two or three witnesses testified to this effect, but others denied it. It was also alleged that Carrie assaulted Emily, and fled from the house, but was induced by her husband to return. On the morning after her marriage she went to the U. S. Marshal and made certain allegations, on the strength of which Miles was arrested for polygamy.

Immediately afterwards the complainant sought to retrace the step she had taken, and returning to her husband begged to be forgiven. Soon after the examination before the U. S. Commissioner, she wrote a letter to the Salt Lake *Herald* denying what she had previously asserted prejudicial to Miles and the Mormon Church, and having thus made amends, was forgiven by her husband and restored to confidence. She accompanied him to his home in the south. Again, however, she became dissatisfied, and at the time set for his trial was as much opposed to him as ever.

Before taking up the subject of the trial, it will be well to note the beginning of a movement which had its origin in the notoriety achieved by the Miles case at its very inception. We refer to the rise of the Anti-Polygamy Society, organized among the Gentile women of Salt Lake City, just after the close of the preliminary examination, whose summarized proceedings have been laid before the reader. While it is true that the growing hostility to plural marriage, enhanced by the recent decision in the Reynolds case, might have led eventually to some such movement, independently of this immediate cause, it is none the less probable that had there been no Miles case, there would have been no general anti-polygamy agitation of so early a date. It was that case which brought the Anti-Polygamy Society into being, and it was that

Society which gave birth to the wide-spread political and religious agitation that led to the enactment of the Edmunds law.

The initial meeting of the Anti-Polygamy Society was held in the Congregational Church—Independence Hall—on the afternoon of November 7th, 1878. About two hundred ladies, Gentiles, with a liberal sprinkling of ex-Mormons, assembled. One of the latter—Mrs. Sarah A. Cook—was chosen president of the meeting. Mrs. Bane, wife of General M. M. Bane, Receiver of the U. S. Land Office, was elected secretary. The spirit and aim of the Society is indicated by the following address, prepared by a committee previously appointed for the purpose, and read to the meeting by a Miss Read :

TERRITORY OF UTAH,

SALT LAKE CITY,

November 7th, 1878.

*To Mrs. Rutherford B. Hayes and the Women of the United States :*

It is more than thirty years ago since polygamy was planted on the shores of Great Salt Lake. During these years, Congress has entirely failed to enact efficient or enforce existing laws for the abolition of this great crime, and we believe that more of these unlawful and unhallowed alliances have been consummated the past year than ever before in the history of the Mormon Church. The Endowment houses, under the name of Temples, are being erected in different parts of the Territory, costing millions. It is impossible to ascertain the exact number of polygamous marriages, for they are consecrated in these Endowment houses, an institution no Gentile is permitted to enter, and the brotherhood and sisterhood are sealed and bound by oaths so strong that even apostates will not reveal them, and to maintain which, witnesses on the witness stand unblushingly perjure themselves and on the jury violate all considerations of oath and duty. Considering all our surroundings, polygamy has never taken such a degrading and debasing form, in any nation or among any people, above the condition of barbarians, as in Utah. It is degrading to man and woman, a curse to children, and destructive to the sacred relations of the family, upon which the civilization of nations depends, and there are things that cannot be repeated or printed that reduce the system to the lowest form of indecency. That it should be practiced in the name and under the cloak of religion, that an apostle, a polygamist, with four acknowledged wives, is permitted to sit in Congress, only adds to the enormity of the crime, and makes it more revolting to our common Christian principles.

Our legislature is composed almost entirely of polygamists and members of the Mormon priesthood, and they have thrown around polygamy every possible legislative safeguard in their power, and the right of dower has been abolished to break down the distinction between the lawful wife and concubine.

The Mormons are rapidly extending their settlements in Arizona, Idaho, New

Mexico, and Wyoming. They have the balance of power in two territories and are, without doubt, plotting for it in others.

We call upon the Christian women of the United States to join us in urging Congress to empower its courts to arrest the further progress of this evil and to delay the admittance of Utah into statehood until this is accomplished. We ask you to circulate and publish our appeal in order to arouse public sentiment, which should be against an abomination that peculiarly oppresses and stigmatizes woman. It is our purpose to ask names to a petition designed for Congress, and we hope, also, that every minister of the gospel will commend it to the women of his congregation and that all Christian associations will do what they can to obtain signatures.

With the cordial co-operation and concentrated action of the Christian women of the land, we may confidently hope that the great sin of polygamy may be abolished.

The address having been adopted, it was resolved that copies of it, and of a memorial to Congress praying for such legislation as would render effective the Anti-Polygamy Law of 1862, be circulated throughout the United States for signatures. Committees were appointed to attend to this matter, to collect money and distribute the circulars. The Anti-Polygamy Society was duly organized and a committee appointed to frame for it a constitution and by-laws. The meeting then adjourned for one week.

This action on the part of the Gentile ladies stirred up a counter-movement among the Mormon sisterhood. On Friday, November 15th, the day after that to which the Anti-Polygamy Society had adjourned, the following call was published in the columns of the *Deseret News*:

#### MASS MEETING.

A mass meeting of the women of Utah is called to convene at the Theatre, Salt Lake City, Saturday, November 16th, at 2 p. m., to protest against the misrepresentation and falsehood now being circulated, with a view to arouse public indignation against our people; and to declare our sentiments upon the subjects at present being agitated. A general attendance of all women interested is desired.

ZINA D. YOUNG,  
M. ISABELLA HORNE,  
EMMELINE B. WELLS.

Pursuant to this call, a multitude of ladies, mostly Mormons, assembled at the time and place appointed. Eliza R. Snow was





*Konama Binnell Pratt, M.D.*



chosen to preside, and Sarah M. Kimball and Augusta Joyce Croch-  
 eron to act as secretaries. Prayer was offered by Mrs. Prescindia  
 Kimball, and addresses were made by Eliza R. Snow, Bathsheba W.  
 Smith, Zina D. H. Young, Hannah T. King, Margaret T. Smoot,  
 Romania B. Pratt, Phebe Woodruff and Emmeline B. Wells. Mrs.  
 Charlotte I. Kirby also contributed a few remarks. The following  
 preamble and resolutions were read to the meeting by Miss Annie  
 Wells:

*Whereas*; We, women of the Church of Jesus Christ of Latter-day Saints, have  
 been misjudged and misrepresented to the nation, by those in our midst of our own sex, in  
 regard to our most sacred rights—the rights which pertain to the holy relations of wife-  
 hood and motherhood, we do hereby earnestly, solemnly and emphatically declare our  
 true sentiments, and invite a thorough and impartial investigation of our cause: Where-  
 fore:

First, *Resolved*, That we, women of the Church of Jesus Christ of Latter-day Saints,  
 and loyal American citizens, claim the right guaranteed by the Constitution, that "Con-  
 gress shall make no law respecting an establishment of religion or prohibiting the free  
 exercise thereof;" a right which we seek to exercise, not to the injury of others, but  
 within the pale of peace and justice, of life, liberty and the pursuit of happiness, accord-  
 ing to the dictates of our own consciences.

Second, *Resolved*. That we protest against the enactment of any laws which deprive  
 American citizens, whether male or female, of any constitutional right; and that we  
 make a united effort to secure the unanimous voice of the women of our faith, to plead  
 the passage of the sixteenth amendment during the coming session of Congress.

Third, *Resolved*: That we solemnly avow our belief in the doctrine of the Patri-  
 archal Order of Marriage, a doctrine which was revealed to and practiced by God's peo-  
 ple in past ages, and is now re-established on the earth, by divine command of Him who  
 is the same yesterday, today and forever; a doctrine which, if lived up to and carried  
 out under the direction of the precepts pertaining to it, and of the higher principles of  
 our nature, would conduce to the long life, strength and glory of the people practicing it;  
 and we therefore endorse it as one of the most important principles of our holy religion  
 and claim the right of its practice.

Fourth, *Resolved*: That we do truly appreciate the efforts and labors of the noble  
 ladies of the National Woman's Suffrage Association who, though opposed in their feel-  
 ings to plural marriage, and without sympathy for our religious views, bravely defended  
 the cause of woman's rights in Utah, in the halls of Congress, and take this public oppor-  
 tunity of tendering them an expression of our sincere and heartfelt thanks.

Fifth, *Resolved*: That the women of Utah memorialize Congress, setting forth their  
 grievances, and that they take such other justifiable steps as may be necessary to defend  
 themselves against the ruthless and violent assault now being made upon their sacred and  
 constitutional rights.

The resolutions were unanimously adopted and the meeting adjourned.

The Miles case came to trial at Salt Lake City late in April, 1879. Judge Emerson presided, Messrs. Van Zile and Beatty conducted the prosecution, and Messrs. Tilford, Hagan, Sutherland and Dusenberry appeared for the defense. Several days were occupied in empaneling a jury, the members of which were A. J. Johnson, William M. Chapman, John F. Crismon, James DeCoursey, Alexander Majors, J. F. Wilcox, Abram Hopper, James Scriminger, Joseph Clayton, Howard Sebree, C. M. Gilbertson and John F. Hardie. The subsequent proceedings began on the 1st and ended on the 6th of May. The witnesses examined were President John Taylor, Miss Kate Connelly, Angus M. Cannon, Mrs. M. J. Foreman, Miss Eliza Foreman, Leo Dykes, M. L. Holland, Joseph F. Smith, Susa Young, Daniel H. Wells, Caroline Owen Miles, Charles W. Stayner, John Connelly, Sarah M. Cannon, Judge Tilford and U. S. Marshal Shaughnessy.

The testimony did not differ materially from that given before Commissioner Sprague, though some additional facts were elicited from several new witnesses. The greatest interest during the trial centered in and around the venerable witness, Daniel H. Wells, out of whose refusal to answer certain questions grew the case of alleged contempt which resulted in his being committed to the Penitentiary.

The prosecution had foreseen that unless they could prove beyond a reasonable doubt the marriage of John Miles with Emily Spencer, which was alleged to have taken place just prior to his marriage with Carrie Owen, it would be impossible to convict him of polygamy. His marriage with Miss Owen was conceded—hence her testimony in the case was objected to by the defense—but the other marriage was disputed. To establish the latter, therefore, was the prime object of the prosecution.

Beyond the statement made by the complaining witness, there had been no evidence adduced to substantiate the Miles-Spencer

marriage, and even that statement was limited to the following points: (1) that she, (Mrs. Caroline Owen Miles) had agreed to her husband's marriage with Miss Spencer; (2) that it was to take place prior to her own marriage; (3) that Miss Spencer was at the Endowment House on the day of the latter ceremony; (4) that Counselor Wells, before pronouncing that ceremony, told her husband that his first wife ought to be present; (5) that Miss Spencer had been introduced or referred to as Mrs. Miles at the home of Angus M. Cannon; (6) that Mr. Miles had subsequently informed the witness that Emily Spencer was his first wife and she (witness) the second.

Moreover this statement was beclouded by a declaration from Mrs. Miles, made during the trial, to the effect that her letter of retraction to the Salt Lake *Herald*, exonerating her husband and the Mormon Church, contained "a good many lies," which she had told "because she loved him so," and because he would not take her back on any other condition; a point turned against the witness by Judge Tilford, who said that "one who would lie for love would also lie for revenge."

At the examination before Commissioner Sprague Mrs. Miles had not been very explicit as to what took place in the Endowment House, a fact accounted for by the prosecuting attorney upon the theory that the "Endowment House oath" was "ringing in her ears." At the trial, however, she assumed to describe the apparel of those who passed through the House, especially the dress worn by Emily Spencer at the time of her alleged marriage. The prosecution sought to show that this was the costume invariably worn in that place by persons who went there to be married. The testimony of Mrs. Miles, who, according to her own statement, was an accomplice in the affair, was not to be received without strong corroborative evidence, and it was such evidence that the prosecution sought to introduce when they placed Daniel H. Wells upon the witness stand. The object was to require the minister supposed to have performed the ceremony uniting John Miles and Emily Spencer to disclose the facts in the case. So much was avowed by the prosecution.

But it was also an effort, in the view taken by the venerable witness and his friends, to compel him to reveal the mysteries of the Lord's House; as sacred to him and to all Latter-day Saints as the secrets of Free Masonry to its votaries. Judge Van Zile, it was said, had boasted that he would cause the rites of the Endowment House to be disclosed in open court. The Mormons regarded it as an attempt to fulfill that threat when on Friday, May 2nd, 1879, Counselor Wells was placed upon the witness stand in the Third District Court and required to answer the questions then and there propounded to him.

Having replied to several queries relative to the manner in which marriage ceremonies were performed in the Endowment House, and stated that it was customary for persons who were married there to wear certain robes, he was interrogated respecting the robes and asked to describe them. This he declined to do, and was adjudged in contempt and committed to the custody of the U. S. Marshal. He was released on parole, however, and given a further opportunity to purge himself of the so-called contempt.

Saturday afternoon, May 3rd. he appeared with his attorney, J. G. Sutherland, before Judge Emerson for that purpose. Taking the witness stand—the regular proceedings in the Miles case being temporarily suspended in order that he might testify—Counselor Wells stated that he would try to answer the questions.

The court reporter then read from the record of the preceding day:

“Do the candidates for marriage wear a green apron at that time?”

Answer.—“At what time? I have performed that ceremony without such attire, at the bedside of the dying.”

U. S. Attorney Van Zile here interpolated: “Do they wear a green apron at marriages in the Endowment House?”

Mr. Hagan interposed the objection that the prosecution had closed its evidence, and asked whether the witness was being examined on the matter of contempt or in regard to the case for which he (Hagan) was one of the attorneys for the defense.

“Both,” answered the Judge.

The defense objected and the court overruled the objection.

Again the question was put to the witness: "Do they wear a green apron at marriages in the Endowment House?"

COUNSELOR WELLS:—I decline to answer. I am under a sacred obligation to preserve secret the things I am now asked to reveal.

ATTORNEY VAN ZILE:—Then we are to understand that you have taken an oath not to reveal what takes place in the Endowment House?

COUNSELOR WELLS:—I did not say so. I said a sacred obligation. I consider it as sacred as any oath taken in a court of justice.

The Judge informed the witness that he had not purged himself of contempt, but by his present attitude was again in contempt.

COUNSELOR WELLS:—I consider any person who reveals the sacred ceremonies of the Endowment House a falsifier and a perjurer, and it has been and is a principle of my life never to betray a friend, my religion, my country, or my God. It seems to me that this is a sufficient reason why I should not be held in contempt.

The Judge stated that this was no legal reason why the question, which had been declared relevant, should not be answered, and though not disposed to be vindictive or severe, yet the dignity of the court must be maintained. He was about to pass sentence when, at the request of Attorney Sutherland, who desired to prepare an argument in the case, further proceedings were postponed until seven o'clock in the evening.

At that hour the proceedings were resumed. The following affidavit was filed:

IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH TERRITORY.

THE PEOPLE vs. DANIEL H. WELLS, SALT LAKE COUNTY, ss.

Daniel H. Wells, being duly sworn, says: In respect to the charge of contempt now pending against me for refusing to answer the two questions relating to the apron and slippers of persons going through the ceremony of the Endowment House of the Mormon Church, I meant no disrespect to this court. I declined wholly upon conscientious grounds. I was willing to testify to any material fact not covered by any previous obligation, and had I been interrogated while on the witness stand to elicit these facts, I should have stated, and the truth is, that persons going through such ceremonies wear special

garments, and these are precisely the same whether the wearer in the course of these ceremonies is united in marriage, plural or otherwise, or not, and those married are not distinguished by any difference of dress from those who do not enter into the marriage relation.

DANIEL H. WELLS.

Sworn to and subscribed before me this 3rd day of May, 1879.

C. S. HILL, Clerk.

By P. H. HILL, Deputy Clerk.

Mr. Sutherland then entered upon an argument in which he showed that although courts had the power to compel a witness to answer, and to treat as contempt a refusal to answer, yet all refusals were not of equal gravity. The questions put to Mr. Wells, as shown by his affidavit, were wholly irrelevant, and therefore immaterial and unimportant. They required him to divulge secrets against which he was bound by what he deemed a sacred obligation, and the same delicate consideration was due to what he religiously cherished as a secret, as was due to all other private and sacred affairs not within the proper scope of judicial inquiry. He reviewed the questions that the defendant declined to answer, showing their irrelevance and unimportance to the prosecution, and in closing stated that under the circumstances a nominal punishment ought to suffice to preserve the dignity of the court.

Attorney Van Zile made no response to Mr. Sutherland's argument, and Judge Emerson, at its conclusion, spoke substantially as follows :

"The question at issue is not a personal one between the defendant and myself, but between the defendant and the court as a representative. General Wells has defied the mandate of the court, and it is necessary that the supremacy of the law should be maintained. The question of the materiality of the inquiries put to the witness is closed and does not enter into this matter, but I am now more firmly convinced than before that those inquiries are material. It is a very disagreeable duty that I have to perform, but I have no alternative. It is ordered that the defendant pay a fine of one hundred dollars and that he be imprisoned for a period of two days."

General Wells was forthwith conveyed by Marshal Shaughnessy to the Penitentiary, where he was allotted a room and treated with courtesy and kindness by the Warden and guards.



The imprisonment of the gray-haired veteran, a man universally beloved by the Mormon people, and highly esteemed by most of the Gentiles, caused a great sensation. Many prominent non-Mormons, though anxious to sustain the court in its attitude toward polygamy, were constrained to declare that the action of the Judge, in adding imprisonment to the fine imposed, was unduly severe. Some held that the Court blundered in deciding the questions to be relevant and material, and while conceding that it had no alternative, after so ruling, but to punish as contempt a refusal to answer them, they maintained that the punishment should have been limited to a light fine, and that the venerable witness, whose brave defense, that it was interwoven in his nature never to betray a friend, his country or his God, had made him the hero of the hour, should not have been consigned even for a day to a felon's cell. Mormondom was stirred to its center, and throughout the community there thrilled, like a blaze from an electric battery, trembling along the wires of popular feeling, a mingled sentiment of indignation toward the Judge and of admiration for the aged prisoner.

This feeling found expression in the mammoth ovation [that has been mentioned; the spontaneous offering of the Mormon people—unexcelled, the world over, for such demonstrations—to the man who had won their gratitude and praise.

It was Saturday evening, May 3rd, when General Wells was sent to the Penitentiary. His brief term of imprisonment would expire on the ensuing Monday evening. The idea of giving him a grand popular reception on his emergence from prison was conceived on Sunday, the 4th, when a committee, consisting of Mayor Feramorz Little, Bishop John Sharp, Theodore McKean, William Jennings, John R. Winder, Andrew Burt and George Crismon, was appointed to superintend the affair. Monday the program was prepared and given to the public. It was arranged that the following grand pageant should meet and welcome General Wells and escort him back to his home:

## HISTORY OF UTAH.

BAND.  
 PRESIDENT TAYLOR AND ESCORT.  
 TERRITORIAL, COUNTY AND CITY OFFICERS, MAYORS AND CITY COUNCILS FROM VARIOUS PLACES  
 AND INVITED GUESTS.  
 REPRESENTATIVES OF THE PRESS.  
 SALT LAKE CITY FIRE BRIGADE.  
 BAND.  
 RELIEF SOCIETIES WITH BANNERS.  
 BAND.  
 SABBATH SCHOOLS WITH BANNERS.  
 BAND.  
 MUTUAL IMPROVEMENT AND RETRENCHMENT SOCIETIES WITH BANNERS.  
 BAND.  
 SEVENTIES.  
 HIGH PRIESTS.  
 ELDERS.  
 BISHOPS AND LESSER PRIESTHOOD WITH BANNERS.  
 BAND.  
 SCANDINAVIAN AND GERMAN CITIZENS WITH BANNERS.  
 BAND.  
 GENERAL CITIZENS AFOOT AND ON HORSEBACK.

General Wells, after leaving the Penitentiary—situated upon the foothills four miles south-east of Salt Lake City—was to proceed to the farm-house of his friend, General R. T. Burton, on the State Road, and there await the arrival of an escort. Tuesday morning, May 6th, the vanguard of the great procession, headed by President Taylor and other prominent Church and civic officials, including the Mayors and City Councils of eleven municipalities, left the city in carriages and proceeded southward. The other sections of the pageant formed at the lower end of Main Street to await their return. The morning was beautiful, and the city alive with enthusiasm. The Stars and Stripes—for it was a patriotic, not a seditious demonstration—fluttered at all prominent points; and in the procession, mingled with flags and banners of every description, were streamers containing such mottoes and sentiments as these:

“Happy, thrice happy shall they be who shall have assisted in protecting the rights of human nature and establishing an asylum for the poor and oppressed of all nations and religions.”—GEORGE WASHINGTON.

“And, I flatter myself, in this country is extinguished forever that ambitious hope of making laws for the human mind.”—JAMES MADISON.

“The rights of conscience we never submitted, we could not submit; we are answerable for them to our God.”—THOMAS JEFFERSON.

“If ever the laws of God and men are at variance, the former are to be obeyed in derogation of the latter.”—BLACKSTONE.

“Thou shalt not forswear thyself, but shall perform unto the Lord thine oaths.”—  
GOD’S LAW.

“Thou shalt forswear thyself, or go to prison.”—MODERN LAW.

“We will teach our children to be true to their country and their God; but to perjure themselves, never!! no, never!!!”

“There is nothing more sacred than a religious obligation.”

“When Freemasons, Odd Fellows and others are compelled to make their secrets public, it will be time enough to practice on Mormons; try the others first.”

“Honor to the man who is true to his religion and his God, and who cannot be overawed by judicial tyrants.”

“Better the Penitentiary for faithfulness in this world, than the Prison-house for perjury in the next.”

“We do not care so much about the color and cut of aprons as we do about justice and equal rights.”

“The dignity of courts will never be upheld by persecution and proscription.”

“While we contend for religious liberty, we do not rebel against the Government.”

“We venerate the Constitution, we honor the law, we respect the Executive, Congress and the Judiciary; we bow to the righteous mandates of the law, but we despise bigots, we execrate tyranny, and protest against intolerance from any source.”

At the Burton farm, three miles south of the city, the escort met and received General Wells. President Taylor delivered the following address of welcome:

President Wells, in behalf of the community who feel outraged by the treatment you have received, I propose to present to you the confidence, the respect, the honor and esteem of the people whose hearts, feelings and affections are with you.

We do not come here to interfere with any matters pertaining to the action of the courts. We leave an intelligent public to act upon that matter and to judge according to their wisdom and discretion. But we have come to exhibit to you our esteem, and to show you, while you are true to your friends, your principles, your country and your God, that your friends are equally true to you. You see exhibited before you the spontaneous feeling of this vast people who have come to meet and to honor the man who, rather than submit to betray his friends, his country and his God, would permit himself to be deprived of liberty and immured in prison. We have come, General Wells, to wipe away a stain sought to be placed upon you by the bigoted, unreflecting and thoughtless, and this demonstration is the spontaneous impulse and action of a generous, patriotic, kind-hearted and friendly people.

For this purpose we have assembled here today, and in behalf of this whole community, I tender to you our sincere regards and our most heartfelt sympathy.

General Wells replied:

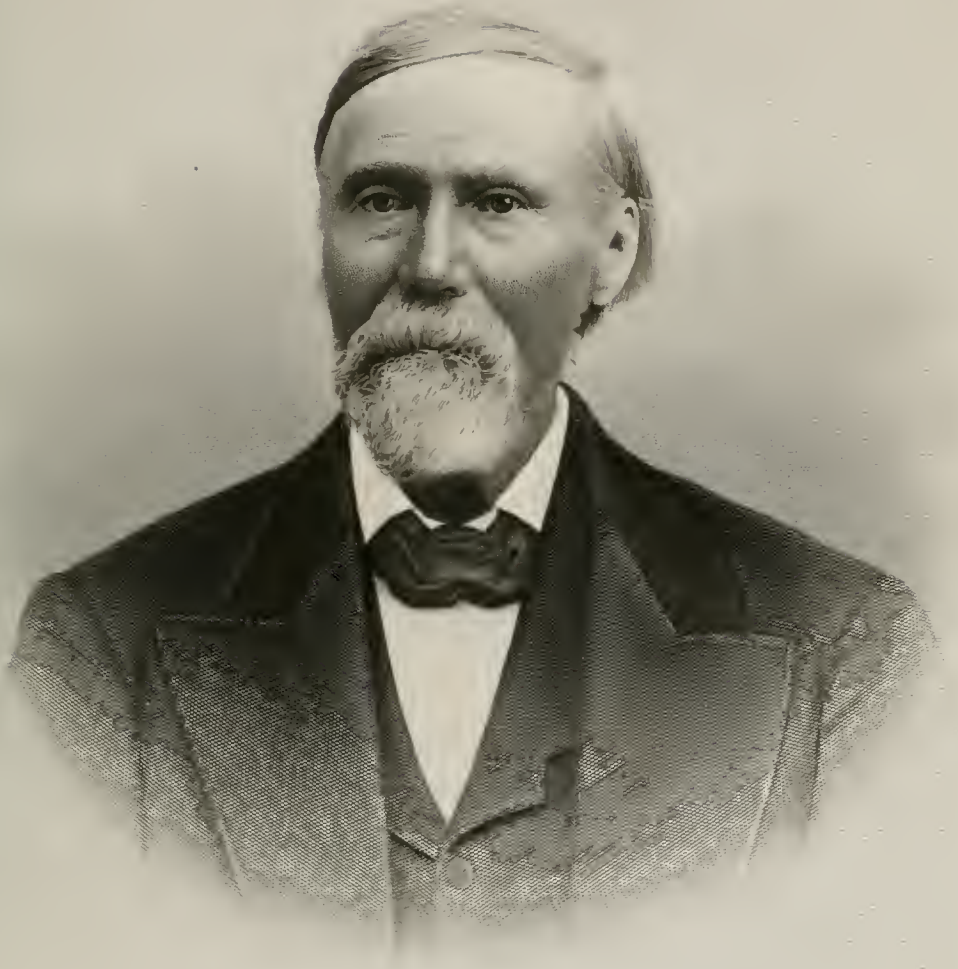
I will simply say that I should feel exceedingly sorry for myself, if I felt for a single moment that any of my friends supposed or could entertain the idea that I could do otherwise than I have done. I would be sorry for myself to feel, or even to think for a moment, that I could swerve from my integrity to the covenant which I have had the privilege, yes, the inestimable privilege of making with my God. I can well afford to suffer bonds, fines and imprisonment, and even death if necessary—which, by the way, has no terrors for me—but to forfeit my fellowship with you, my brethren, or a single particle of that confidence which is reposed in me by the people of God, through violating the sacred and holy covenants we have entered into, I could not afford. That would indeed be a source of sorrow and regret, not only through time, but for all eternity.

My treatment at the hands of the United States officers during my imprisonment has been civil and courteous. I feel happy and well, and am rejoiced to meet you, though I did not expect any such demonstration as this. I thank you heartily; but not, however, so much for myself as for the expression of your feelings to sustain the principle. I know that you are my friends and that you are the friends of the Most High God; and I pray that I may ever be worthy of your confidence and esteem and be the friend of the Lord. I will not detain you, but in the fullness of my heart I say, God bless you forever; and again, thank you for this expression of your kindness and love.

He then entered the carriage with President Taylor and the cortege returned to the city. The procession being fully formed, the magnificent array, with bands playing, banners waving, flags flying, moved slowly up Main Street, past the Federal Court room\*—the balcony and windows of which, with every other high place in the vicinity, were crowded with spectators—and thence northward to the Tabernacle. The streets were thronged with citizens, most of them in sympathy with the demonstration, and all along the line the procession was greeted with and gave back enthusiastic cheers. Fully ten thousand people took part in the pageant and no less than fifteen thousand witnessed its passing.

At the Tabernacle, which was speedily filled, leaving thousands upon the outside, the exercises consisted of music and speech-making. Eight bands occupied the choir. The banners and streamers were arranged around the galleries of the great building, whose

\* Then in the Wasatch Block, corner of Main and Second South Streets. 2



*Samuel P. Hoyt.*



interior presented a splendid spectacle. The entry of General Wells was the signal for a tremendous outburst of applause. Men cheered, women clapped their hands and waved handkerchiefs, the banners and streamers were set in motion, and a surging sea of colors seemed blending with the billows of sound that reverberated through the vast auditorium.

The enthusiasm for several minutes was unrestrained. Then came music by the bands, after which President Taylor, called the assembly to order, and Apostle Franklin D. Richards offered prayer. Addresses by General Wells and President Taylor followed, and after more music, benediction was pronounced by Apostle Joseph F. Smith. So ended the great reception.

The Miles trial, out of which grew the stirring incident described, came to an end just before the opening of the proceedings at the Tabernacle. As the procession passed the Federal Court room, a placard bearing the inscription: "United States *vs.* John Miles—Verdict Guilty," was flaunted from the balcony before the eyes of the moving multitude by an officer of the Court.

Such was indeed the result of the trial. The arguments of counsel had closed on Monday evening. Tuesday morning the Judge charged the jury, and they were only a few minutes in finding a verdict of guilty. The desire to drag into the case extraneous issues—a practice common in the McKean period—was manifest during this trial. The Assistant U. S. Attorney, Mr. Beatty, in addressing the jury, said that the issue of the matter was between the Mormon Church and the United States Government, to which Judge Tilford replied, that the only issue before the Court was whether or not John Miles was guilty as charged in the indictment.

Guilty the jury had declared him, but it was Dame Rumor with her hundred tongues, and not "the mouths of two or three witnesses," regularly summoned and sworn, that had convicted him. Guilty he may have been, but his guilt had not been legally established.

A motion for a new trial followed, the defendant remaining on

bail in the meantime, and the hearing took place on the 2nd of June. The motion was argued and overruled, and the defendant, on the same day, was sentenced to pay a fine of one hundred dollars and to be imprisoned for a term of five years. It was proposed to send him to the Nebraska State prison, to which Elder Reynolds was about to be consigned. A notice of appeal was filed, and on June 16th, the matter was heard and taken under advisement by the Supreme Court of the Territory. A few days later that tribunal, by Judge Boreman, affirmed the decision given, and an appeal was then taken to the court of last resort. Among the assignment of errors upon which a new trial was asked were the following:

The Court erred in allowing the attorney for the United States to ask the jurors, or any of them, if they believed in polygamy, or if they belonged to the Mormon Church, or allowing any questions as to the religious belief of any juror.

The Court erred in allowing in evidence any declarations or admissions of Miles, made at the house of Angus M. Cannon on the evening of the alleged dinner party.

The Court erred allowing witness Carrie Owen to be sworn, as she is the alleged second wife, and, so far as appears, the wife of defendant Miles, and no first marriage or other marriage of defendant Miles was proven to the Court or jury; that admissions or declarations alone cannot prove a marriage in a case such as the one at bar, and that Carrie Owen was an incompetent witness, and disqualified from testifying at this stage of the case.

The Supreme Court of the United States rendered its decision in the Miles case on April 4th, 1881. It held that while the District Court did not err in excluding from the jury certain Mormons—believers in but not practicers of polygamy—or in admitting the declarations of the defendant Miles to prove his first marriage, that tribunal did err in allowing Caroline Owen to give evidence against Miles touching his alleged marriage with Emily Spencer, since the law of Utah declared that a wife should not be a witness for or against her husband, or *vice versa*. “The marriage of Miles with [Caroline Owen,” said the decision, “was charged in the indictment and admitted by him upon trial. The fact of his previous marriage with Emily Spencer was therefore the only issue in the case, and that was contested to the end of the trial. Until the fact of the marriage of Emily Spencer with Miles was established, Caro-



line Owen was *prima facie* his wife, and she could not be used as a witness. \* \* \* For the error above indicated, the judgment of the Supreme Court of Utah is reversed and the case remanded for a new trial."

So ended the celebrated Miles case. The defendant was not again put upon trial. The U. S. Attorney felt that a conviction was impossible, and the prosecution was therefore abandoned, and the case dismissed. John H. Miles, at last accounts, was a resident of Bear Lake County, Idaho. Carrie Owen accepted a clerk's position in one of the Government offices at Washington. We shall hear of her again in the course of this narrative.

## CHAPTER III.

1879-1880.

PRESIDENT YOUNG'S ESTATE IN LITIGATION—THE HEIRS *VS.* THE EXECUTORS—PRESIDENT TAYLOR ARRESTED—IMPRISONMENT OF APOSTLES CANNON, YOUNG AND CARRINGTON—ELDER GODDARD'S INCARCERATION—THE GREAT SUIT COMPROMISED—A MORMON MISSIONARY MURDERED—ELDER JOSEPH STANDING ASSASSINATED IN THE STATE OF GEORGIA—ELDER RUDGER CLAWSON RETURNS TO UTAH WITH THE REMAINS—FUNERAL SERVICES OVER THE MARTYR—THE ASSASSINS ACQUITTED—THE BANE-MUSSER ASSAULT—BITTER FEELINGS BETWEEN MORMONS AND GENTILES—THE SPIRIT OF MURDER ABROAD—THE HOPT-TURNER TRAGEDY.

A FEW weeks after the close of the Miles trial in the Third District Court, proceedings in a notable civil action were begun before the same tribunal. It was the great suit of the Heirs *vs.* the Executors of the estate of President Brigham Young, and involved the ownership of property valued at more than a million dollars.

The plaintiffs in the case, which was complicated, and gave rise to a countersuit and one or two smaller pieces of litigation, were seven of the late President's heirs, namely: Emmeline Young Mackintosh, Marinda Young Conrad, Louisa Young Ferguson, Elizabeth Young Ellsworth, Vilate Young Decker, Dora Young and Ernest Irving Young. The defendants were George Q. Cannon, Brigham Young and Albert Carrington, executors of the last will and testament of Brigham Young, deceased; President John Taylor, Trustee-in-Trust of the Church of Jesus Christ of Latter-day Saints, and John Sharp, Edward Hunter, Horace S. Eldredge, George Goddard, Leonard W. Hardy, Theodore McKean, Joseph C. Kingsbury and Angus M. Cannon, persons to whom, it was alleged, certain portions of the property in question had been conveyed in trust for the Church.

President Young, at his death, had left an estate worth two and



J. G. Sutherland



a half millions of dollars, to be divided according to the terms of a will of which Messrs. Cannon, Young and Carrington, three of the Apostles of the Church, were the executors. The legatees were numerous, the list including all the President's children, about forty in number, though only the seven named were parties to the action against the executors. Indeed, at the outset there was but one who took the initiative and planted the suit, the six others subsequently appearing as parties plaintiff. The one referred to was Emmeline A. Young, called in the will Emmeline A. Young Mackintosh, the latter being the name of her first husband, from whom she had separated. She was now known as Mrs. W. C. Crosbie, wife of a popular comedian of the period, though only her maiden name—Emmeline A. Young—was used in this litigation.

The complaint, which was filed about the middle of June, 1879, stated that the executors had "grossly neglected and violated their duties," and had "wilfully wasted and converted" a large portion of President Young's estate, to the value of about \$1,200,000. The lesser portion—\$200,000—they were charged with having appropriated to their own use, under pretense of compensation for services, expenses of administration and payment of legacies. The principal amount—\$999,632.90—they were accused of pretending to allow on a false and fraudulent claim against the estate by the Trustee of the Church of Jesus Christ of Latter-day Saints. The plaintiff, who assumed to speak, not only for herself, but for all the heirs of her deceased sire, excepting Brigham Young, one of the executors, claimed that she had not received "more than one half part in value" of the estate distributed, "to which on a fair distribution she would be entitled," "thus showing the unfitness of said executors for their trust and duty." Application was made for an injunction against the executors, restraining them from the further performance of their duties, and against President Taylor enjoining him either as Trustee-in-Trust or otherwise from disposing of any of the property so consigned to him; for the appointment of a receiver to whom they must deliver up all moneys, property and assets under their control until

the final hearing of the case, and for "a reasonable allowance" out of the funds of the estate to pay the expenses of this action. There was a further request that, as a final judgment, all the transfers and conveyances be declared illegal and void; that the property be returned to the estate; that the executors be required to render an account of their administration, to make good all that they had wasted or illegally disposed of, and that a trustee or trustees be appointed in the place of the executors to settle and distribute the estate to the beneficiaries entitled thereto.

The attorneys for the plaintiff were Messrs. Tilford and Hagan and Sutherland and McBride, of Salt Lake City: the counsel for the defendants, Messrs. Richards and Williams, of Ogden, and W. N. Dusenberry, of Provo, who represented President Taylor; Messrs. Bennett and Harkness, and Sheeks and Rawlins, of Salt Lake City, who appeared for the executors.

Judge Emerson granted the application for an injunction and the appointment of receivers in the case, W. S. McCornick, the well known banker, and U. S. Marshal Shaughnessy being selected to act in that capacity.

While nominally conducting the case in behalf of all but one of her father's heirs, it soon transpired that the plaintiff, Emmeline A. Young, was acting only for herself and the six others previously mentioned, the rest of the legatees, barring one or two who were absent from the Territory, repudiating either tacitly or openly the unauthorized use of their names. The following "card" published in the *Deseret Evening News* a few days after the planting of the suit, tells its own story in this connection:

SALT LAKE CITY, JUNE 17, 1879.

*Editors Deseret News:*

In your issue of the 16th inst. I note that Mrs. Emmeline A. Young, alleging certain frauds touching the administration of her father's estate, has entered suit against President John Taylor *et al.* Allow the writer, in behalf of his wife, to disclaim any participation in the above suit, any faith in its justice, or any intention to allow the plaintiff, Mrs. E. A. Y., to represent these or any other interests of her co-heir, Mrs. J. Y. S.

HENRY SNELL.

The answers of the defendants to the complaint were filed on the 30th of June, a little over two weeks after the beginning of the litigation. From the separate answer of President John Taylor the following excerpts are taken :

This defendant, John Taylor, comes in his own right only, and for answer to plaintiff's complaint alleges,

I. That he has no individual interest in this controversy, and that his only connection with the matters in controversy is as Trustee-in-Trust for the Church of Jesus Christ of Latter-day Saints.

\* \* \* \* \*

II. This defendant, on information and belief, denies that the plaintiff, Emmeline A. Young, had authority to bring suit for or on behalf of any of the heirs, legatees or beneficiaries under the said will of said Brigham Young, deceased, or that she was in any manner authorized to represent them or either of them, or to bring a suit in her own name for or on behalf of said heirs, legatees or beneficiaries. \* \* \* But on the contrary, alleges that each family of the testator constitutes a distinct and separate class by said will, and only the children of said Emmeline A. Young's mother by said testator, or their descendants, constitute the class to which she belongs, or have a joint interest with her, namely, Ella Elizabeth Y. Empey, Marinda Hyde Y. Conrad, Hyrum Smith Young, Louisa W. Y. Ferguson, Lorenzo D. Young, Alonzo Young, Ruth Young Johnson, and Adela Elvira Young.

III. This defendant, on information and belief, denies that said testator died seized of estate worth \$2,500,000 over and above all just debts and liabilities, or that the property to which he held the legal right or title was worth over \$1,626,000; and this defendant says that much of said estate was held by the testator as Trustee-in-Trust for said Church which was the equitable owner and beneficiary, and that he was largely indebted at the time of his death and justly owed to said Church over \$1,000,000.

\* \* \* \* \*

This defendant denies that the executors of said will of said testator have pretended to allow, in defiance of statute and of their duty in such cases, or have fraudulently allowed a false and fraudulent claim against the estate of the testator on the 10th day of April, 1878, or at any other time, to this defendant as Trustee-in-Trust for said Church, to the amount of \$999,632.90, or for any other amount.

\* \* \* \* \*

But on the contrary, defendant says that each and every item of said claims, so allowed by the executors and approved by the Probate Judge of said Salt Lake County, was a *bona fide* existing indebtedness, honestly due and owing to said Church, and said claim for said item was for the funds, property, and assets of said Church, under the control and in the legal custody of said testator as Trustee-in-Trust for said Church.

\* \* \* \* \*

And for a further defense this defendant states and alleges :

I. That the aforesaid testator, Brigham Young, deceased, acted as the President and

chief officer of the Church of Jesus Christ of Latter-day Saints, as a corporation, and as its Trustee-in-Trust, and sustained such fiducial relations to it, from the time of its incorporation until the time of his death, and as such chief officer and Trustee-in-Trust he had the care, custody and control of its estate, assets and funds. That in the settlement of the accounts, affairs and responsibilities arising out of the administration of said Brigham Young, deceased, as Trustee-in-Trust as aforesaid, this defendant as successor of said testator as such trustee, and the executors of his will, found three classes of property, held by him at the time of his death, to wit:

First, A class of property known to belong to said Church, and which he held and recognized as its property.

Second, A class of property which he held and claimed as belonging to himself individually and disconnected from the Church and in which it had no interest.

Third, A class of property which once belonged to the Church, but the legal title to which he had afterwards acquired; such property was therefore regarded as uncertain. That in the settlement of the liabilities of the estate to the Church, and in separating its property from his individual property, this dubious and uncertain class of property was all given to his estate as part and parcel thereof, and such only was claimed as Church property about which there was no doubt or uncertainty.

\* \* \* \* \*

That all of the property, both real and personal, which was paid on the aforesaid indebtedness, was received by this defendant as Trustee-in-Trust, at liberal prices and at much higher figures than its reasonable cash value, or than it could have been sold for.

IV. That after the will of said testator, Brigham Young, had been duly admitted to probate and the said executors, Cannon, Carrington and Brigham Young, had executed bonds with approved sureties, as required by law and the Probate Court; and after they had duly qualified as such executors, and had liquidated said account with this defendant as the successor of the testator as Trustee-in-Trust for said Church, the heirs, legatees, devisees and beneficiaries under the will of said testator on the 15th day of April, 1878, filed their petition in the Probate Court of Salt Lake County, in which court said will had been probated, praying said court to require said executors to report the liabilities of said estate and all claims against it and by whom said claims were presented, etc., also the assets of every kind and character of said estate; and two days thereafter a citation was issued from said court to said executors, who then fully developed and made known to said heirs their said conveyances to this defendant as Trustee-in-Trust, as aforesaid, the property so held by said testator in trust for said Church, also the settlement and conveyances aforesaid in liquidation of the said claim which had been allowed by them and approved by the said Probate Judge in favor of this defendant as Trustee-in-Trust as aforesaid. That after filing the petition last above named, and after the executors had made known to said beneficiaries under said will their action in the premises, as aforesaid, the mothers of the various families named in the will then living, or a majority of them and of all their children of the age of twenty-one years, in pursuance of a provision of said will, by petition filed in said Probate Court, May 7th, 1878, consented to and petitioned for the winding up and closing of said estate, and they then and there selected and appointed as



valuers to act with said executors in making a final division and allotment of said estate, A. O. Smoot, Nicholas Groesbeck and Theodore McKean, and then notified said executors, by writing, of such selection and appointment, and sought a speedy settlement and distribution of the estate, and in pursuance of the provisions of said will and in compromise of all claims, causes of litigation and dispute, nearly all of the said heirs, legatees, devisees and beneficiaries under said will, including the plaintiff, Emmeline A. Young, agreed to and did execute to said executors, releases and covenants similar to the one signed by the plaintiff, by her attorney in fact, Heber P. Kimball, a copy of which is attached hereto as part thereof, marked Exhibit A. \* \* \*

And that in pursuance of said power of attorney, said Kimball acted as said plaintiff's agent, and for her did receive her full share of all of said testator's estate, amounting to \$21,000, and did for her execute all the foregoing named acknowledgments, receipts, releases and covenants, both to said executors and to this defendant as Trustee-in-Trust, whereby and wherefor said defendant says that said plaintiff is bound by the actings and doings of her said agent, and is forever estopped and barred from the maintenance of this suit or any recovery therein; and as he is informed and believes said plaintiff received said \$21,000 from her said agent. \* \* \*

And this defendant further says, that the testator, President Brigham Young, in his lifetime, fully recognized his liabilities to said Church as its Trustee-in-Trust, not only as to his indebtedness aforesaid, but as to the property so held by him in trust for it, and by his last will directed his executors to pay all his debts and to make all proper conveyances, and settle all trusts, and by his oft-repeated verbal statements acknowledged his liabilities for the property and assets of the Church so held by him, and thereby showed his good faith and honest purpose to settle his liabilities to said Church.\*

\* \* \* \* \*

Therefore this defendant asks judgment, that the injunction and restraining order heretofore issued in this case be dissolved and set aside, that the order appointing receivers be vacated and revoked, and that this action be dismissed at plaintiff's cost, and for such other orders and relief as may seem mete to the court and to equity may belong.

The executors in their answer made the following statements:

The defendants George Q. Cannon, Albert Carrington and Brigham Young, executors of the last will of Brigham Young, deceased, separately answering the plaintiff's complaint, herein deny that the said Brigham Young, deceased, left an estate of the value of two and one half million dollars, or that the estate, inclusive of certain property held by him in trust and not properly a part thereof, exceed in value the sum of \$1,626,510.08. They

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\* Section 38 of President Young's will, dated November 14th, 1873, says:

"I authorize my executors to settle all trusts wherein I am trustee, and to pay any debts I may owe in respect to the same, and to receive whatever claims may be due my estate therefrom, and to make conveyance and assignment to the proper party or parties of the trust estate, and to take proper indemnity and security, as to all outstanding liabilities I may be under for such trust estate, so that my private estate shall suffer no loss by reason of my liabilities for such debts."

deny that as such executors or otherwise, in the administration of said estate or in any matters connected therewith, either in the particulars alleged in the complaint, or in any way, they have grossly or at all neglected or violated their duties or any duty, or have not faithfully administered the said estate, or have wilfully or fraudulently or in any way wasted or converted, or suffered to be wasted or converted, a large or any portion of said estate or the property thereof.

And these defendants further answering, allege that the said Brigham Young, deceased, for many years prior to his death was the President and Trustee-in-Trust of the Church of Jesus Christ of Latter-day Saints, and as such had at various times taken the titles to various parcels of the real estate described in the complaint and therein alleged to have been conveyed to said John Taylor in payment of the aforesaid claim; but the titles to such properties were specially held in trust by the testator, in his lifetime and the properties had been possessed, improved, and used by said Church, and were notoriously the property thereof, and did not come to the possession of these defendants as assets of the estate of the testator, and these defendants solely as a matter of justice and equity, conveyed said properties to the said John Taylor, as Trustee of such Church, without any consideration or pretense of consideration, for the sole purpose of releasing any semblance of title in them as such executors, and that the trust assumed by the testator in respect to said properties might be faithfully and honestly executed.

\* \* \* \* \*

That after the decease of said testator, the said John Taylor was duly elected and appointed the Trustee-in-Trust of said Church corporation, and acted as such in all the transactions alleged in the complaint, between him and these defendants. That as such Trustee and in behalf of said Church, he demanded of these defendants a conveyance of all the property held by the testator in trust and also presented for allowance the claims set forth in the complaint, verified in due form. That the defendants, believing said claim to be just, allowed the same, and as they are informed and believe the same was afterward presented to the Judge of the Probate Court of said county for allowance and by him duly allowed, and thereupon these defendants, deeming it their duty, under the directions and authority of the will of the testator and by virtue of their office as executors, to settle and discharge said claim and all claims and demands against the estate of the testator, arising out of all connection with his said trust, negotiated a settlement of the same with said Taylor, as Trustee, and after procuring a credit of \$300,000 to the estate of said testator for his services, settled the said claim and all claims arising out of said trust, by conveying and transferring to said John Taylor, as such Trustee, in full discharge of all claims of said Church, either on matters of account or for property claimed to be held in trust for said Church (excepting only the property herein above described, held in trust) the following real and personal property, and no other.

\* \* \* \* \*

Further answering, these defendants say, that as required by said will and at the request of all the mothers mentioned in the will and of the legatees thereunder that were at the time of age, a valuation was made by these defendants and three competent persons appointed for that purpose by the said mothers, of all the real and personal estate of the said testator, and a final division and allotment of the share of the real and personal

estate made and a proper and equal share of the same was set off to each of the children of such of the mothers as were then deceased. That the mother of said plaintiff was then deceased and the said plaintiff of lawful age. That such equal share of each of the children of such deceased mothers, including the plaintiff, valued at \$21,000, was so set off and allotted, and the possession of their respective portions delivered to and received by them, with full knowledge of all the acts and doings of these defendants in the administration of said estate, whereupon and in consideration thereof, each of said children, including the plaintiff, voluntarily gave, and these defendants took and received, releases and acquittances under seal of all claims and demands and of all right and title in or to the estate the remaining or undivided part thereof. That at the same time and upon like appraisal, division, and allotment, the children whose mothers were still living, at their own request, received from these defendants as such executors, an advancement of property valued at \$18,000 each, and gave a release and receipt therefor, and of all interest in said estate, reserving, however, their several interests in the reversion of that portion of said estate retained by defendants to support the mothers and widows mentioned in said will during life or widowhood, and property retained to pay debts and liabilities, and the value of such reversionary interest was esteemed and appraised at the difference between \$18,000 and \$21,000, and the releases aforesaid are the same mentioned in the complaint and therein alleged to have been unlawfully exacted. Wherefore these defendants ask to be dismissed hence, with their costs in this behalf expended.

To make still plainer the position of the Trustee-in-Trust and the executors in this matter, it is but necessary to state that among the pieces of real estate conveyed by the latter to the former, as belonging to the Church and only held by the late President in trust for the Church, was the Temple Block, containing the Tabernacle, the unfinished Temple and other buildings sacred to and owned by the entire Mormon people. To assume that it was the intention of President Young to claim and deed to his children property belonging to the Church of which he was the Trustee, was an insult to his memory. Such an imputation was as false as the suit against his successor in office and the executors of his last will and testament in relation to that property was unwarranted and unjust.

The next act in the drama was the arrest, on July 12, of the defendants John Taylor, George Q. Cannon, Brigham Young and Albert Carrington, for alleged contempt of court, in failing to turn over to Receiver McCornick certain properties that they had been ordered to deliver. The warrant of arrest was issued by Judge Boreman, who had succeeded Judge Emerson in a temporary occupancy

of the bench of the Third District; the latter had previously issued a similar process, but after a hearing had discharged the writ for the reason that it was not shown wherein the defendants had disobeyed the mandate of the Court. Judge Boreman having taken the bench, another effort was made with a somewhat different result. In response to the second order to show cause, the defendants again appeared and answered. President Taylor was able to show that he had informed the receiver that at the death of President Young the Church was considerably in debt and that a portion of the personal assets paid by the executors to the Church as Trustee funds had been used to meet those liabilities. He proved that he had not only turned over to the receiver the remainder of those assets, but had offered to execute a bond with any security that the Court might demand, to indemnify the plaintiffs against any supposed danger of loss by reason of the acts of the Church or its Trustee-in-Trust, or to secure the payment of any judgment which the plaintiffs might ultimately obtain in this action. The executors, in their answer, denied that they had disobeyed the order of the Court and declared under oath that they had turned over to the receiver all the estate property in their hands.

The hearing over, President Taylor was discharged from custody, his proffered bond being accepted. The executors, on the contrary, were committed to prison, they having refused, for the reason that they were under heavy bonds already, to furnish additional security required of them by Judge Boreman. The date of their incarceration was Monday, the 4th of August; the place, the Utah Penitentiary, where, on the following Sabbath, Apostle Cannon, at the request of the other inmates, and by permission of Warden Butler, preached to "the spirits in prison." The Mormon dignitaries were treated with kindness during their imprisonment, which ended on the 28th of August. On that day Judge Boreman's order committing them for contempt was reversed and set aside by the Supreme Court of the Territory and the prisoners were liberated.

Meantime a counter-suit in the pending litigation had been insti-

tuted. Its abbreviated title was the Mormon Church and John Taylor, Trustee-in-Trust thereof, vs. the Heirs and Executors of the Brigham Young Estate. On the 7th of August the attorneys for the plaintiffs—Franklin S. Richards, R. K. Williams, A. Miner and W. N. Dusenberry—moved for “the appointment of persons to defend in the above entitled cause suitable for such purpose,” it being impracticable, owing to the great number of the defendants, to bring them all before the court. Chief Justice Hunter\* had arrived by this time, and was sitting in chambers. He overruled the motion. A day or two later the attorneys for the litigant heirs gave notice that they would move for the dismissal of the complaint in the new suit, and the Judge thereupon ordered a stay of proceedings until the 2nd of September, when arguments upon the motion would be heard.

An episode of the main issue was the arrest and imprisonment, on August 25, of Elder George Goddard, one of the defendants in the original action. It was caused by his refusal to relinquish possession of the Black Rock house and grounds on the shore of the Great Salt Lake. Elder Goddard held the premises by virtue of a deed from the Trustee-in-Trust, and Marshal Shaughnessy claimed them as a portion of the property turned over to him as receiver. The Marshal had rented the place to Mr. E. H. Murphy, a liquor dealer of Salt Lake City, who doubtless had in view the setting up of a saloon and the establishment of a summer resort. On seeking to take charge, he found Mr. Goddard and his friends, staunch temperance advocates, in possession of the premises, and was told that the receipt which he held for the rent thereof was not valid, as the property was not in the hands of those who had given the receipt. Thereupon Mr. Murphy returned to the city and reported to Marshal Shaughnessy, who, procuring a writ of arrest, proceeded with a deputy to Black Rock, arrested Mr. Goddard and conveyed him to the Penitentiary. The prisoner, whose alleged offense was contempt of court, was admitted

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\* Chief Justice John A. Hunter had been nominated by President Hayes on July 1, of this year—1879—and confirmed by the Senate on the day following. He arrived at Salt Lake City early in August. He was from the State of Missouri.

to bail. The Marshal having secured possession of the house and grounds in dispute, the case against Elder Goddard was dismissed.

Arguments upon the motion to dismiss the counter-suit were made at the time appointed, and Judge Hunter then took the matter under advisement.

The next step was the substitution by order of court of Lemuel B. S. Miller, a clerk in the U. S. Marshal's office, for Emmeline A. Young, as plaintiff in the original action.

Early in October the great suit was settled by compromise between the parties, and all the litigation came to an end. The final release of the litigant heirs, as filed in court in the settlement of the case, ran as follows:

Whereas Emmeline A. Young in behalf of herself and the other heirs at law and legatees of Brigham Young, late of Salt Lake City, Utah Territory, deceased, has commenced and is now prosecuting an action in the district court for the Third Judicial District of said Territory of Utah, against George Q. Cannon, Albert Carrington and Brigham Young, as executors of the last will of said Brigham Young, deceased, and others impleaded with them, charging the said executors, by said action and proceedings connected therewith, with waste and misappropriation of the moneys and property of said estate, and particularly with the misappropriation of real estate to John Taylor, as Trustee of the Church of Jesus Christ of Latter-day Saints, on a claim by said Trustee that said property was held in trust by said Brigham Young, deceased, for the use of said Church, and the transfer and delivery of other real and personal property in payment to said Church of an allowed claim against said estate of \$999,632.90, less \$300,000, deducted for services of the deceased; also with waste and misappropriation of the moneys and property of said estate, in payment of the debts and liabilities of John W. Young to a large amount; and also in the payment of claims against said estate barred by the statute of limitation, and in otherwise wasting and misappropriating the assets of said estate; and whereas the undersigned are desirous of settling with said executors, concerning all the several matters charged in said complaint and proceedings in said action, and also concerning all charges of waste or misappropriation made against them;

Now, in consideration thereof, and for the sum of \$75,000 to them in hand paid, the undersigned, heirs and legatees of said deceased, severally release and discharge the said George Q. Cannon, Albert Carrington and Brigham Young, executors as aforesaid, and each of them, of and from all claims, demand, actions and causes of action against them, or either of them, as executors on account of the waste and misappropriation of assets charged in said action or specified in the proceeding for contempt taken against them in said action; and from all charges of waste and misappropriation of the assets of said estate, and ratify and confirm all that said executors or either of them have done in

the administration of said estate as executors or trustees, as shown by their accounts of said administration. Witness our hands and seals this 29th day of September, A. D., 1879.

(Signed),

ELIZABETH Y. ELLSWORTH,  
 VILATE Y. DECKER,  
 LOUISA W. Y. FERGUSON,  
 DORA YOUNG,  
 ERNEST I. YOUNG,  
 MARINDA H. Y. CONRAD,  
 EMMELINE A. YOUNG,  
 LEMUEL B. S. MILLER.

Judge Hunter's decree in the case was dated the 4th of October. It was a complete exoneration of the executors from the charges preferred against them. It discharged the receivers after fixing the amount of their compensation—one thousand dollars each—for services rendered; returned to the parties previously holding the same all the property placed in the care of the receivers, discharged President Taylor from his bond, and barred all farther legal action against the defendants.

The latter, in paying the sum of seventy-five thousand dollars to the heirs, did not concede the rightfulness of their claim. It was avowed to be purely in the interests of peace, and to prevent the estate, of which it was a part, from being absorbed and swallowed up by what threatened to be a long and expensive litigation.

It was while the agitation over these proceedings, particularly the arrest of President Taylor and the three Apostles, was at its height, that the tidings reached Utah of the murder of Elder Joseph Standing, a Mormon missionary, in the State of Georgia. The tragedy occurred near Varnell's Station, Whitfield County, on the 21st of July, and was the bloody culmination of a mobocratic assault upon Elder Standing, President of the Georgia Conference, and Elder Rudger Clawson, his fellow laborer in that field. Twelve men participated in the murder, which was witnessed by Elder Clawson, who, narrowly escaping the fate of his companion, was the first to acquaint the Utah public with the crime.

Elder John Morgan, President of the Southern States Mission, at

his home in Salt Lake City, on leave of absence, received from Elder Clawson the following telegram:

CATOOSA SPRINGS, GEORGIA.

July 21st, 3:50 p. m.

*John Morgan, Salt Lake:*

Joseph Standing shot and killed today, near Varnell's, by a mob of ten or twelve men. Will leave with body for home at once. Notify his family.

RUDGER CLAWSON.

The awful news was soon in circulation throughout the Territory, and intense grief and indignation found instant and spontaneous expression. Elder Standing was little more than a boy, being but twenty-four years of age, unmarried, and of a mild and peaceable disposition. He was the son of James Standing, a stone-cutter, formerly of Salt Lake City, but at the time of this cruel event a resident at Hampton's Station, on Bear River.

Varnell's Station, Georgia, in the vicinity of which the murder occurred, is a typical village of the South. It was first visited by Elders Morgan and Standing in October, 1878. They there converted several souls, organized a branch of the Church, and emigrated a family of seven persons to Colorado. The people—proverbial for hospitality—treated the Elders very kindly, but their success enraged the preachers of other denominations—notably the Methodists and Baptists—who, in December of that year, sent several of their representatives to Varnell's to undo if possible what the Mormons had done. Incited by slanderous reports, an armed mob soon afterwards drove three Elders, Charles W. Hardy, C. H. Hulse and Thomas Lloyd, from that neighborhood, threatening them with death if they returned. Subsequently a missionary full of fiery zeal applied to President Morgan for permission to visit the village, but the request was denied, it being deemed wiser to place in charge of the district an Elder of cooler temper, whose conduct would conciliate rather than arouse opposition. The choice fell upon Joseph Standing. On the 8th of July he wrote to President Morgan that he and Elder Clawson, who had been laboring with him in Pickens County, would



leave Ludville in a day or two to attend a conference at Rome, and that they would stop en route at Varnell's, about midway between the two places. Prior to this the following correspondence had passed between Elder Standing and the Governor of Georgia:

VAN ZANT STORE, FANNIN COUNTY, GA.,

June 12th, 1879.

DEAR SIR: As an Elder of the Church of Jesus Christ of Latter-day Saints, commonly called "Mormons," I take this occasion to address a few lines to you as the highest officer of the State.

I have recently received several letters from members of our denomination residing at Varnell Station, Whitfield County, informing me that Elders of my profession have been obliged at times to flee for their lives, as armed men to the number of forty and fifty have come out against them and have also on various occasions entered their houses in search of said Elders.

I am fully aware, dear sir, that the popular prejudice is very much against the "Mormons," and that there are minor officers who have apparently winked at the condition of affairs above referred to. But I am also aware that the laws of Georgia are strictly opposed to lawlessness and extend to her citizens the right to worship God according to the dictates of conscience.

History, however, repeats itself, and the laws, where prejudice exists, are not always executed with impartiality.

A word or line from the Governor would undoubtedly have the desired effect. Ministers of the Gospel could then travel without fear of being stoned or shot and the houses of the Saints would not be entered in defiance of all good law and order.

Your kind attention to this matter will be duly appreciated by

Your humble and obedient servant,

JOSEPH STANDING,

Presiding Elder of the Georgia Conference,

Atlanta, Georgia.

*To His Excellency, Governor Colquitt.*

ATLANTA, GEORGIA,

JUNE 21st, 1879.

*Mr. Joseph Standing, Van Zant Store, Ga.*

DEAR SIR: In reply to your letter of the 12th inst., the Governor directs me to say that your statement is entirely correct, that the laws of Georgia are strictly opposed to all lawlessness, and extend to her citizens the right of worshipping God according to the dictates of conscience.

Under the provisions of our State Constitution, the reformation of religious faith or of opinion on any subject, cannot legitimately be the object of legislation, and no human authority can interfere with the right to worship God according to the requirements of conscience. So long as the conduct of men shall conform to the law, they cannot be molested and even for non-conformity thereto they can be interfered with only as the law

may direct. No individual or combination of individuals can assume to vindicate the law. Courts and juries are instituted for that purpose, and to them alone is committed the office of legally ascertaining the perpetrations of crime, and of awarding punishment therefor.

The Governor regrets to hear the report you give from Whitfield County. He will instruct the State prosecuting attorney for that district to inquire into the matter, and if the report be true, to prosecute the offenders.

I am, sir, very respectfully yours,

J. W. WARREN,

Secretary Executive Department.

The foregoing facts were given to the public by President Morgan. What followed was related by Elder Rudger Clawson, who, with the mangled body of his murdered friend, arrived at Salt Lake City on the evening of the 31st of July.

Elders Standing and Clawson, on their way to attend the conference at Rome, called at the house of Mr. Henry Holston, about three miles from Varnell's. Though not connected with the Mormon Church, this gentleman was a very good friend to the Elders. He now received them under his roof and pledged to them his hospitality and protection, an act highly appreciated by the two missionaries, who had just been turned away from the door of a Mormon family, too timid to make them welcome for fear of their enemies in that vicinity. The twain had returned to the home of the family in question to get their satchels, and were making their way through the woods back to Mr. Holston's, to bid him good-bye before continuing their journey, when, at a bend in the road, they suddenly met three horsemen who ordered them to halt, and then began signaling to others behind them and shouting, "We've got them." It was about half past ten o'clock, Sunday morning, July 21st. The three horsemen were immediately joined by nine other men, some on horseback and some afoot. All were armed with guns, pistols or clubs. With hideous yells they rushed upon their prey. On being surrounded, the two Elders asked by what authority they were apprehended. "You'll know soon enough," was the gruff response, and with that they were taken back in the direction from which they came. On the way an old man named Jonathan Owensby was encountered.



*Wm. Jefferies*



He was mounted on a lean and hungry looking horse. "Anything the matter with your horse?" inquired the mob in derision. "If there is, these Mormon Elders will heal him by the laying on of hands." Mr. Owensby passed on. The mob then turned out of the road and hurried their prisoners deeper into the forest. Immediately on entering the woods they met a young girl whose mother, a Mrs. Hamlin, having seen the mob pass her house, and being friendly to the Elders, had sent her daughter, Mary, to warn them of their danger. "We've got your brethren," tauntingly exclaimed some of the men, "and we'll tend to you hereafter." The girl's face blanched as she realized the peril of the Elders, but she bravely replied, "The Lord is with them, and my prayers are for them." The mob with their prisoners left her behind. While going along, one of the party named Benjamin Clark, said to be a Baptist deacon, struck Elder Clawson with his fist on the back of the head. The latter, who had done nothing to provoke the assault, which was from behind, staggered and nearly fell. Turning, he cast a withering look at his cowardly assailant, who seemed to be the youngest man in the party, and continued on his way. Exasperated by his coolness, Clark raised a club to strike him but was prevented by his companions. The Elders were told that they were going to get "a sound flogging," a fate which Joseph Standing had been heard to say he dreaded more than to be killed outright.\* The mob inquired concerning the whereabouts of Elder Morgan, and on being told, to their evident disappointment, that he was in Utah, asked when he would return to Georgia. In answer to a remark by Elder Clawson, who said that he thought the United States was a land of religious liberty, they said, "There is no law in Georgia for Mormons." Reaching a beautiful clearing in the midst of which bubbled up a cool spring, most of the party rested while some of the horsemen rode on for the

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\* "A sound flogging" in the South usually meant that its victim, stripped, would be bound face downward over a fallen tree, and beaten with hickory withes until insensible. Such torture was indeed more to be dreaded than instant death so far as mere pain was concerned.

apparent purpose of selecting a suitable spot in which to administer the threatened whipping. Elder Standing, who was seized with a burning thirst, was permitted to slake it at the spring. He then resumed his seat on the ground, forming part of a circle, the other members of which were the mob and his fellow captive. At this juncture, James Fawcett, a man about sixty years of age, said to the two missionaries: "I am captain of this party and I want you to understand that if, after today, you ever come back to this part of the country we'll hang you up by the neck like dogs." Others abused the Elders in language still stronger. A few minutes later the horsemen returned and exclaimed, "Follow us." At this moment Elder Standing, rendered desperate by the situation, sprang to his feet, wheeled suddenly around, clapped his hands together and pointing them at the horsemen, shouted: "Surrender!" Quick as a flash, one of the party, seated at his left, arose, thrust out a pistol and fired into the Elder's face. The ball entered just above the eye, putting it out, and made its exit about an inch above on the forehead. He reeled twice and fell. All eyes were at once turned to Elder Clawson. "Shoot that man!" exclaimed one of the mob. A dozen weapons were instantly leveled at him. Gazing at the frowning muzzles, the young man thought that his last moment had come. But his was an intrepid soul, one that did not fear death. Folding his arms he calmly said: "Shoot." His coolness and courage staggered the assassins, and one of them quickly countermanded the order. The guns were lowered and the men gathered into a group to consult, leaving Elder Clawson free to turn his attention to his dying friend. As he was bending over him, a man named Nations approached. "Terrible, terrible," said he, "that he should have killed himself in this manner." Seeing the need of caution, the Elder replied: "Yes, it is terrible." Others took up the refrain, seeking to persuade him that his friend had purposely or accidentally shot himself. He was permitted to go to Holston's house for assistance, and on the way called to a wood-chopper whom he heard on the other side of a creek, about a mile from the scene of the crime,

and telling him that a man had been murdered, asked him to go with him and help remove the body. "I haven't time," was the cool business-like response, as the man resumed his chopping. Mr. Holston, however, went alone to the spot, after lending Rudger a horse to go in quest of the coroner at Catoosa Springs. Within two miles of that place he met some of the murderous gang who asked him where he was going. He pointed west. Thinking that he was leaving the State, they allowed him to depart without molestation. Arriving at the Springs, a fashionable watering place, his first care was to send telegrams to Governor Colquitt, at Atlanta, to the Prosecuting Attorney of Whitfield County, and to President Morgan, at Salt Lake City, informing them of the murder. He saw the County Coroner and also acquainted him with the facts. An inquest was held over the dead body of Elder Standing the same night. Besides Elder Clawson, others who had seen the mob and recognized them testified. Mr. Holston stated that when he arrived at the scene of the murder, Elder Standing was still breathing, but armed men were loitering in the vicinity, closely watching every movement. After constructing a shade of boughs to shelter the body from the hot rays of the sun, he had returned home to make ready for its removal. The corpse, when the inquest was held, was stabbed repeatedly and riddled with bullets, the object of the assassins, in this savage mutilation of the body, probably being to implicate their entire party in the crime, to insure a unanimity of silence and mutual sympathy among them. Following is the verdict of the Coroner's jury, published in the *Independent Headlight*, at Dalton, Georgia, on the 26th of July:

We, the jury sitting upon inquest over the dead body of Joseph Standing, having heard all the evidence in the premises, and having made examination of the dead body, find that the deceased came to his death by gun and pistol shots, or both, inflicted upon the head and neck of deceased, said wounds consisting of twenty shots or more from guns or pistols in the hands of David D. Nations, Jasper N. Nations, A. S. Smith, David Smith, Benjamin Clark, William Nations, Andrew Bradley, James Fawcett, Hugh Blair, Joseph Nations, Jefferson Hunter and Mark McClure, and in view of the above stated facts we, the jury, do hereby recommend that the coroner of said county do issue a warrant for the arrest of the above-named parties forthwith.

After having the body encased, Elder Clawson left with it for home, taking rail from Dalton. Money to pay the expense of the transportation had been promptly furnished by Benedict Hall and Co., of New York, on application by telegraph. At Ogden and Salt Lake City the body was met by mourning multitudes, and at the latter place made ready for burial. Impressive funeral services were held at the Tabernacle on Sunday, August 3, the speakers being Apostle George Q. Cannon and President John Taylor, after which the remains were deposited in the city cemetery, where, a year later, a stately monument, the gift of the Young Men's Mutual Improvement Associations, in which the deceased had been an earnest worker, was placed above the sleeping dust.

Meantime several of the assassins had been apprehended, and in the spring of 1880 Elder Clawson received a subpœna issued by the Circuit Court of Whitfield County, Georgia, requiring him to appear at Dalton in the following October and testify in the cases of the People vs. Jasper N. Nations, Andrew Bradley and Hugh Blair, charged with the killing of Joseph Standing. Their arrest, which was accomplished with difficulty and danger, was due to the energy and courage of the Deputy Sheriff of Whitfield County. Elder Clawson, after consulting with President Taylor, who left it to his own volition as to whether he should revisit the State of Georgia, resolved to go at all hazards. He might be assassinated by friends of the men against whom he testified, but he was determined that if they escaped punishment for their crime it should not be for the want of direct evidence of their guilt. He reached Dalton in September, and was there joined by Elder John Morgan, the brave and capable President of the Southern States Mission, concerning whom the mob that murdered Joseph Standing had inquired so anxiously the year before. The Grand Jury did their duty. Upon the testimony of Rudger Clawson, Henry Holston, Mary Hamlin and Jonathan Owensby, they found a true bill against the three defendants for murder in the first degree, manslaughter and riot. The trial, which was before Judge McCutcheon, followed within a few days. Solicitor General A. T. Hackett and





*Thomas Howard*



Colonel W. R. Moore, an attorney of prominence and ability, conducting the prosecution. Five lawyers were engaged for the defense. A jury was obtained with much difficulty, for no one was anxious to serve, and the trial proceeded. It was a mere farce. The evidence was direct and conclusive and the prosecuting attorneys faithfully performed their part, but the Judge and jury were biased in favor of the defendants, and they were acquitted on all three counts of the indictment. That there was "no law in Georgia for the Mormons" was verified, so far as Whitfield County was concerned.\* Seeing that nothing more could be done, and being warned by a friendly Georgian that a trumped-up charge of perjury was being prepared against him, Elder Clawson returned to Utah.

The Standing murder, with the arrest of President Taylor, and the imprisonment of Apostles Cannon, Young and Carrington, caused intense feeling throughout the Mormon community, already under some stress of excitement over the indignity put upon Counselor Wells during the Miles trial. This feeling was increased by an incident that occurred on the afternoon of Sunday, August 3, the day of the murdered Elder's funeral. It was a violent assault upon the person of A. M. Musser, Esq., by Dr. Harry Bane. Both were residents of Salt Lake City, the former, as has been shown, a prominent Mormon, and the latter a non-Mormon, the adopted son of General M. M. Bane, Receiver of the Land Office. Mr. Musser had attended the funeral services at the Tabernacle and had returned to his home on First East

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\* An act of fairness on the part of the editor of the *Atlanta Constitution* should be noted in connection with this trial. Certain scandalous reports in reference to Joseph Standing having been published by that paper, the editor, learning that the reports were untrue, sought an opportunity to make the *amende honorable*. For this purpose he paid a personal visit to Dalton during the trial of Elder Standing's murderers and did his utmost to obtain a clear statement of the case. He first secured the services of one of the attorneys for the defense, a young man named Williams, who eagerly enough prepared an article for publication. The manuscript was submitted by the editor to Elders Morgan and Clawson, with the request that they correct all inaccuracies and add any additional facts that they might deem necessary. They did so, and the article, much to the chagrin of Mr. Williams, appeared as thus revised in the columns of the *Constitution*.

Street, near the Catholic Church. He was sitting with his wife in the dining room of his residence, when there was a knock at the front door, that of the parlor, where his little son, a lad of fourteen, sat reading. Opening the door, the boy confronted two men, Harry Bane and G. W. Elliott. They inquired for Mr. Musser. The boy invited them in and went to call his father. They did not enter the dwelling but remained upon the porch outside. When Mr. Musser appeared, Mr. Bane presented an envelope, remarking that he delivered it "with the compliments of Mrs. Bane." The envelope bore the address, "Mrs. General Bane, Salt Lake City—Kindness of Mrs. Clements," and was empty. No sooner had Mr. Musser taken the paper, the address upon which diverted his gaze, than Bane seized him by the lapel of his vest with his left hand and, bringing forth his right, which till then he had held behind him, began beating the head of the defenseless gentleman with a thick rawhide whip. At the first blow, which was a heavy cut across the temple, Mr. Musser was partly stunned. His son attempted to interfere, but was pushed aside by Elliott. Mrs. Musser then came upon the scene and, seizing Bane, secured the whip, which she would have used upon the persons of the two intruders had they not immediately left the premises. Getting into a buggy which stood in front of General Bane's residence, they drove rapidly away. The police authorities were at once informed of the assault and the fugitives were pursued and after a brisk chase captured and brought back. At the City Hall they gave bonds for their appearance on the following Wednesday.

The blows received by Mr. Musser were twelve or fifteen in number, and though painful to a degree and causing temporary disfigurement, did not inflict any serious injury. The provocation for the assault was a series of articles published in the Salt Lake *Herald*, reflecting upon the moral status and antecedents of one or more members of the Anti-Polygamy Society, recently organized, and in which Mrs. M. M. Bane was a prominent figure. These articles Dr. Bane attributed to Mr. Musser, and, like Iago, "for mere suspicion in that kind," did "as if for surety." Being a youth of

powerful build, a trained athlete, while his victim was a man of middle age, not physically strong, the attack was not only ruffianlike, it was cowardly.

Ordinarily the incident, though it might have caused some stir, from the prominent names involved and the rarity of such proceedings in the community, would not have created the excitement that ensued. Mr. Musser himself might not have felt it so keenly at another time. But the Mormon blood was already up, and the camel's back of public patience was just about ready to break under the accumulated weight of events heaped thereon. The Bane-Musser episode was the one straw which almost completed the cracking process; the match that all but lit the fuse leading to a terrific popular explosion. In fact, had it not been for an act of retaliation, reprehensible from a moral standpoint but not to be wondered at under the circumstances, there is no telling what might have ensued. Perhaps the community has reason to thank Mr. Musser for furnishing an escape valve at this critical time—for taking the law into his own hands, as he did a few days after the assault, by publicly chastising, with the same whip that had been used upon his own person, Dr. Harry Bane, his assailant.

The second assault took place in the forenoon of August 6th, the time set for the examination of Messrs. Bane and Elliott. The court room at the City Hall was crowded with spectators, and though an appearance of calmness rested upon the scene, it was evident that underneath the quiescent crust the fires of wrath were hotly smouldering. The defendants waived examination and gave bonds for their appearance before the Grand Jury. This was looked upon by the Mormons as the virtual end of the matter. They did not believe that the U. S. Attorney, who was an Anti-Mormon, would trouble himself to call the case to the attention of that body. General Bane and his son, having filed the bonds, left the court room. They had no sooner entered the hallway leading to the exterior of the building, than several men sprang to the various doors and locked them, penning the police and the magistrate in their respective apartments and com-

pletely barring the passage to the outside. Forthwith a fight began in the hall-way. Mr. Musser, one of those present, singled out Harry Bane, upon whose devoted head he rained a shower of blows, using, as stated, the same stout rawhide from the applications of which he himself had suffered. The police finally broke in the doors and quelled the disturbance, arresting the militant parties, who gave bonds for their appearance when wanted. Mr. Elliott, Dr. Bane's friend, scenting danger from afar, had leaped from the court room window the moment the doors were locked and betaken himself to a safe distance from the scene.

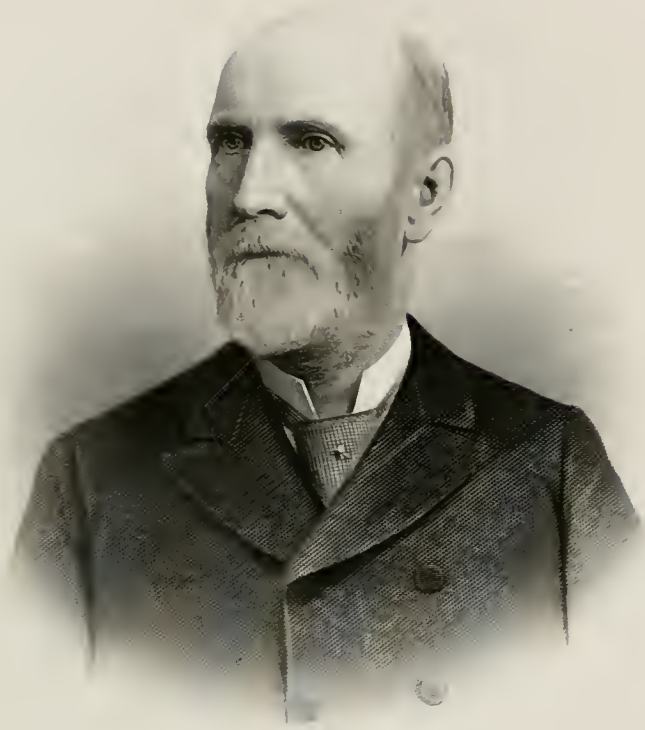
"Assault with intent to kill" was the charge brought by U. S. Attorney Van Zile, in behalf his clients, the Banes, against Mr. Musser and his friends. The latter were willing to plead guilty to assault and battery, but not to a more serious charge. They therefore waived examination and were held to await the action of the Grand Jury. Nothing more came of the affair. None of the parties in either case were indicted. The retaliation for the original assault being looked upon as "a Roland for an Oliver," the public wrath gradually subsided, and in a little while the incident was almost forgotten.

A few excerpts from a couple of editorials in the *Deseret News* are here inserted as showing the temper of the Mormon community at the time of which we have been writing. The first article was entitled "Let the Issue Come;" the second, "Hands Off:"

The events of the past few days have caused some excitement in this community and much freedom of expression has been the consequence. Fears of a genuine "up-rising" have been indulged in, and those who, some years ago, spread abroad rumors of such an expected catastrophe have been really concerned lest a veritable "Mormon outbreak" should occur.

Those who would be chiefly affected by any unsettlement of our affairs in this Territory are the merchants and business men. One prominent non-"Mormon" merchant of this city, yesterday, deprecated very much the retaliation for the murderous assault of last Sunday, because of its general effect on trade and the arrest it would cause of the influx of capital.

should be understood that the course taken by just such men as he is the real barrier to the material progress of the Territory. They have sustained by their means and



Joseph Bull.





influence the very agencies which have brought about the present condition of affairs, and they are likely to be sufferers. It is fit that they should be. For our part we care little about such results. If a conflict has to come, we would just as soon it commenced today as postpone it any longer. The "Mormons," as they are called, can stand it if others can. We can get along if all their merchants and other business interests were scattered to the winds or sunk in the bottom of the Lake.

Our morning contemporary indulges in some remarks in deprecation of anything that would be likely to result in a "financial set-back," and says, "nobody here can afford to revive the time of 1870-72." To which we answer, nobody can afford to meet such an issue so well as the Mormon people, who form the *bona fide* resident settlers of Utah. The transients and those whose sole object in staying here is to make money can the least afford to meet it. But they have provoked the conflict. If there are any evil consequences to follow, on their heads be the brunt of battle.

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If the carpet-baggers want to inaugurate a collision, we think they can be accommodated: but the time has come when the people will not succumb to their villainies. If there are any more attacks upon peaceable citizens in their private dwellings, the thugs who attempt it will surely meet their deserts, and if there is no protection from the courts we shall not any longer counsel submission. We are not here to bow down as serfs to Government appointees, nor to lick the bribe-stained hands of satraps. We are still in possession of certain inalienable rights which we do not propose to surrender; among them are "life, liberty and the pursuit of happiness." We shall protect our lives as best we may from the murderous assaults of imported assassins. We shall contend for our liberties and resist the incarceration of honorable men in jails, while land-sharks, conspirators, murderers, seducers, and other vagabonds go at large; and we propose to pursue happiness in our own way without the dictation of those corrupt scoundrels, who, while heaping abuse upon us, are seeking to introduce here the foulest forms of vice.

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We settled in these quiet vales to serve God and build up Zion, and by His help we will do it, and we see no reason why we should bow our necks to the yoke, and submit to be smitten and spit upon by the vile and despicable crew who have provoked one small act of retaliation, which, if they do not desist, will be the first drop of the drenching storm to come.

We can afford to be called radical and to be denounced as incendiary, but we cannot afford to allow a few unprincipled adventurers to ride rough-shod over us and trample our rights into the dust. If the issue is to come, all right; we want it to be understood that, best of all people, the "Mormons" can afford to meet it.

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We recognize the fact that there are honorable men and ladies here, who do not see with our eyes nor endorse our views. We freely accord to them, and will help to maintain for them, the same liberty we claim for ourselves. We have no words of censure or reproach for them except wherein they allow themselves to be in any way identified with the corrupt scoundrels who make all the mischief that disturbs the community.

But to the infamous gang to whose malign influence we have submitted so long without

murmuring, we have no words of apology, and nothing else at present but contempt and scorn, and we wish them to understand that they are the party who had better "call a halt." We are ready for the collision if that is what they wish to provoke. We have amply proven to the world that we are a peaceable, quiet community, and that we have no desire for strife. But if they think we cannot stand up for our rights under God and the Constitution, they will find they are egregiously mistaken.

The people are aroused, and the responsibility rests on the plotters against our peace as to what the result will be. But as the Lord lives and the sun shines, they had better cease their diabolism, and at any rate *keep their hands off*.

The spirit of strife and murder seemed running rampant at this period. A murderer named Wallace Wilkerson, the slayer of William Baxter, was executed at Provo in May, 1879, and in June of that year the trial of Joseph Dudley of Plain City, Weber County, for the killing of Henry Wadman, Jr., occupied the attention of the Third District Court. Wilkerson's crime was that of an inebriate quarreling over a game of cards. Dudley killed the seducer of his wife, and slew him, it was said, in self-defense. He was acquitted. April, 1880, witnessed the outrage and murder of Mary Parker, an aged lady, near Springdale, Kane County, a crime for which young Jared Dalton was tried, convicted and sent to the Penitentiary. In July following occurred the Hopt-Turner tragedy at Park City, Summit County, a deed of blood notable not only for its unprovoked atrocity, but for the extraordinary example of "the law's delay" furnished in the prosecution of the criminal, who was four times tried, convicted and sentenced, before being executed.

The victim of this homicide was John F. Turner, son of Sheriff John W. Turner, of Provo, Utah County, through whose patient and indefatigable exertions, as much as anything, Fred Hopt, *alias* Fred Welcome, the murderer of his boy, was eventually brought to justice. The assassin's motive seems to have been plunder—since he appropriated and sold young Turner's team, wagon and camping outfit—mingled with a desire, in a mind partly disordered by drink, to avenge himself upon the Sheriff and his family for some fancied injury. Hopt had been at various times in Sheriff Turner's custody. The four trials extended through a period of seven years, during



*John W. Turner*



which, owing to errors in the proceedings, the action of the Utah courts was three times reversed by the Supreme Court of the United States.\*

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\* After the third trial, in June, 1884, the District Court and the Supreme Court of the Territory refused to order a stay of execution pending another appeal to the court of last resort; the Judges holding that the law as it then stood did not provide for such a stay, though it had been granted twice before in the same case. This inconsistent attitude was supposedly due to fear on the part of the Judges that further delay would result in mobocracy and the lynching of the prisoner. Another reason assigned was that they dreaded another reversal of their decision at Washington. They recommended that the acting Governor grant a reprieve, pending further proceedings. Meantime a mass meeting of citizens convened, demanding that the execution take place. The courts still declining to interfere, the acting Governor—Hon. Arthur L. Thomas—finally came to the relief of the strained situation by granting the reprieve and thus preventing what, in the minds of the majority of local jurists, would have been “a judicial murder;” the execution of a man, however guilty, before giving him the benefit of his appeal. A third time the decision of the lower courts was reversed by the judicial authorities at Washington, and the case remanded for another trial. Once more the murderer was tried, convicted and sentenced. No reversal followed this action, and Hopt finally paid the penalty of his crime, being shot to death within the walls of the Utah Penitentiary on the 11th of August, 1887. His supposed accomplice, Jack Emerson, *alias* John McConnell, whom Hopt accused of committing the murder, had been sentenced to the Penitentiary for life, but there being reason to believe him innocent, he was pardoned by the Governor, after several years’ imprisonment.

## CHAPTER IV.

1880-1882.

THE MORMON JUBILEE—THE LATTER-DAY SAINTS CELEBRATE THEIR FIFTIETH ANNIVERSARY—PROCEEDINGS AT THE JUBILEE CONFERENCE—MEASURES FOR THE RELIEF OF THE POOR—GENERAL SUPERINTENDENCY OF THE Y. M. M. I. A. ORGANIZED—GRAND CELEBRATION OF PIONEER DAY—A MAGNIFICENT PAGEANT—TWENTY-FIVE NATIONALITIES REPRESENTED—IMPRESSIVE EXERCISES AT THE TABERNACLE—PRESIDENT HAYES VISITS UTAH—GOVERNOR MURRAY—AN HISTORICAL RETROSPECT—THE FIRST PRESIDENCY OF THE MORMON CHURCH REORGANIZED—NEW YEAR'S RECEPTION AT THE GARDO HOUSE.



HE year 1880 was the Mormon Jubilee. On the sixth day of April the Church of Jesus Christ of Latter-day Saints completed its first half century. The event was appropriately celebrated at Salt Lake City and at other towns of the Territory.

The student of sacred history is aware that in ancient Israel, under the law of Moses, it was customary to observe every fiftieth year as a jubilee, and "proclaim liberty throughout all the land unto all the inhabitants thereof." At [such times poor debtors were released, bondmen freed, inheritances which misfortune and poverty had swept from the possession of their owners restored, and a season of general rejoicing inaugurated.

It occurred to President John Taylor, the chief Apostle of the Mormon Church—which claims to be modern Israel—that the completion of its first fifty years ought to be signalized by something of the same character, so far as the ancient custom would apply. Pursuant to this thought, which soon took the form of a resolve, he laid the matter before the Apostolic Council over which he presided and by which the idea was heartily sanctioned. It was next presented to the General Conference of the Church which convened at the Tabernacle in Salt Lake City on the 6th of April.



yours truly  
J. E. Taylor





It was on the second day of the Conference that President Taylor brought before the congregation the subject that was uppermost in his mind. He spoke of the advent of "the year of jubilee," and of the custom that prevailed in ancient Israel of liberating the poor from the thralldom of debt. The drought of the previous summer and the severe cold of the past winter had caused considerable suffering in some parts, and he proposed the following as measures of relief for the benefit of those who were worthy:

(1) The remission of one-half the indebtedness due to the Perpetual Emigrating Fund, amounting to \$802,000.

(2) The remission of one-half the amount of the delinquent tithing due to the Church, equivalent to \$75,899.

(3) That a thousand good milch cows and five thousand head of sheep be distributed among the poor, three hundred of the cows and two thousand of the sheep to be given by the Church and the balance by the several Stakes.

(4) That the Relief Societies, which had stored up wheat to the amount of 34,761 bushels, loan it for seed to farmers who might need it, on condition that it be paid back after harvest; the Bishops to manage and be responsible for the loan.

All these propositions received the approval of the congregation, which voted for them unanimously.

Continuing the subject, the President advised the rich and prosperous to forgive their impecunious debtors, and suggested that among business houses Zion's Co-operative Mercantile Institution, of which he was now the head, set an example in cancelling upon its books the debts of poor persons desirous but unable to settle their accounts.

In a circular letter from the Twelve Apostles to the Presidents of Stakes and Bishops of Wards, issued on the 16th of April, the propositions voted upon were set forth in detail and the methods by which they were to be carried out fully explained.

During this memorable Conference occurred the organization of the General Superintendency of the Young Men's Mutual Improve-

ment Association. Wilford Woodruff, Joseph F. Smith and Moses Thatcher were appointed that Superintendency, with Junius F. Wells, Milton H. Hardy and Rodney C. Badger as assistants. Heber J. Grant was made Secretary and William S. Burton Treasurer of the Association, which reported at this time twenty Stake organizations, 240 societies and 9,284 members.

The Mormon year of jubilee was destined to have another commemoration, the most magnificent of its kind that the Church has yet witnessed. It was the celebration of July 24th—Pioneer Day—the thirty-third anniversary of the arrival of Brigham Young and the vanguard of his migrating people on the shores of the Great Salt Lake.

At Salt Lake City, for a month prior to the advent of the day, preparations for its observance on a scale of unprecedented grandeur had been going on under the direction of a general committee comprising the following well known names: Joseph E. Taylor, Wilford Woodruff, George Goddard, Samuel L. Evans, William Eddington, Joseph H. Felt, George M. Ottinger, Thomas E. Taylor, William H. Rowe, Charles R. Savage and Mrs. Emmeline B. Wells. Numerous sub-committees were appointed, and no detail was neglected that might conduce to the success of the undertaking.

The 4th of July, this year, had been celebrated by the Gentiles of Salt Lake City, and in the proceedings no Mormon had been invited to participate. Moreover, Utah's new Governor, Hon. Eli H. Murray, had taken occasion, in a speech delivered by him on that day, to make certain allusions not at all complimentary to the Mormon people. Though more or less indignant at his utterances, the Mormons, when their turn came to celebrate, resolved not to retaliate in kind, but to "heap coals of fire," in a scriptural sense, upon the Executive and his associates. Hence, included in the list of specially invited guests were Governor Murray and other Federal officials. It will be well to insert here a portion of the Governor's Fourth of July speech, which was delivered in the open air on Washington Square. Said he:

The tree of liberty planted in 1776 has grown with our days, and strengthened with the years until its spreading branches reach from sea to sea, broad enough to shelter all patriots, native-born or naturalized. *Further shall I say, and rich enough in timber to construct scaffolds and coffins for all those who may treasonably conspire to break down our Constitution and to violate its written laws.*

The people of this country propose to remain free forever. No state will be wiped out. No star obliterated from our national flag. Upon the other hand, no new state will be formed, no new star placed upon the folds of our flag, until the people it represents come with the badge of freedom upon their breasts. Free to think for themselves. Free to act for themselves. Free from all kingly and *priestly dictation in civil affairs*, a liberty-loving, law-abiding people, who, with "their lives, their fortunes and their sacred honor," will defend this government—our precious blood-bought heritage, the pride of a loving, loyal people. *Utah shall be free, and then, and not till then, a state.* The shackles that bind so many of her good and too-confiding people to the superstitions of a dead past will, by their own acts, their own words, be broken. With her great resources in mines and in fields, let young Utah go forward in unison with civilization, the law, and to the music of the Union, established by the fathers and preserved by their sons, to clasp hands with an inviting and great future.

The *Deseret News*, commenting on the speech, said:

The Governor's effort was not admired by many of his hearers, and we do not think it will commend itself to the general public when read. Its beginning and ending do not harmonize. He commences by deprecating sectional feeling on such an occasion, and closes with an attack on one section of our common country. And after expatiating on liberty and its fruits, he proceeds to threaten and prophesy evil to Utah, because of the freedom which the majority of its citizens exercise in matters that relate to their own welfare, socially and religiously. Every one who understands the situation in this Territory, and reads the Governor's remarks, can perceive all through the speech allusions to what he mistakenly imagines to be conditions existing in Utah.

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We attribute much of this ill-feeling to lack of authentic information. But at the same time we are of the opinion that all his true friends will be sorry that he has been so ill-natured, unwise and sectional as to take advantage of a time like the People's Day, to say things as untrue as they are unkind and illiberal, against a portion of the People, that very portion, too, whom he ought to understand, and, so far as he can, protect and defend in their liberties. We will say for his benefit that there are no shackles here, except those which have been forged by the hands of men paid by the Government to be servants of the people, and who attempt to make themselves masters of the people. His allusions to "Church and State," "priestly dictation," "superstitions of a dead past" and a "too-confiding people," etc., are totally inapplicable in the direction in which they are aimed.

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The Governor wants "Young Utah to go forward in unison with civilization," and

intimates that until she does, there is no statehood for her. We say that if the price of statehood is an unholy alliance with the debasing and corrupt thing in this degenerate age called civilization, God Almighty grant that she may remain in her present condition of territorial spinsterhood! Civilization! What is the civilization that these "Christian" statesmen and office-holders wish to force upon us? What have they introduced, fostered and kept alive in our midst? It was held up to our gaze in the procession on Monday, which was the special work of those people. Cheek by jowl, linked in with Federal officials, preachers, reformers and "Christian" regenerators of the "deluded Mormons" were the most notorious cyprians of this western region, in open barouche, placed in the line of invited guests, between the carriages of those whom we have named and the vehicles of other well known citizens! The officers who represent this "civilization" ahead, and in their wake a display of prostitutes, beer drays, liquor wagons, cigar trucks, etc., a fitting illustration of the history of official work for the reformation of the Mormons.

To all the prophecies of the Governor in relation to Utah's future freedom we assent, discarding his insinuations and conditions. Utah, under the name of Deseret, will truly yet be free! Free from officials who use their position to insult and browbeat the people! Free from imported autocrats forced upon them without their consent! Free from superstitions of apostate Christendom, with its spurious, arrogant and God-forsaken priesthood! Free from courts and officers that encourage licentiousness and put a premium on vice! Free from misrepresentation, abuse and calumny! Free to worship God as her citizens desire, and to magnify and maintain the principles of the glorious Constitution which they have always revered, and to exercise the rights of civil and religious liberty, for which many of their fathers bled, but which are now denied by those who shout themselves hoarse over lip liberty, and over that independence which consists but in Fourth of July froth and spread-eagle orations!

We sincerely wish the Governor better manners, a more kindly spirit, sounder discretion, a disposition to learn facts instead of fiction, and wisdom to hear both sides of a controversy before he leaps to judgment. And we gently remind him that we have heard of scaffolds and coffins before from men who now lie in their graves and whose memory is almost forgotten. And while they have perished and passed from sight, that which they assailed lives on, stronger, brighter, and with greater promise, and will so live and increase and flourish till it extends from the mountains to the ends of the earth.

It was soon after the publication of this article that the Mormon committee having in charge the arrangements for the grand Pioneer Day celebration, invited Governor Murray and the other Federal office-holders to be present and participate in the proceedings. Polite letters of acceptance from nearly all were received by Hon. John T. Caine, chairman of the committee on invitation. Here is the Governor's communication:



*James Thomas Snare*



TERRITORY OF UTAH, EXECUTIVE OFFICE,  
SALT LAKE CITY, July 16th, 1880.

*John T. Caine, Esq., Chairman Com. on Invitation, Pioneer Celebration.*

SIR:—I beg to acknowledge your very polite invitation, received last evening, to attend “the celebration exercises to take place on the 24th of July in commemoration of the entrance of the Pioneers into Salt Lake Valley.” The Pioneers, in opening up the Great West, and this beautiful valley, made a definite demand on history for honorable mention. Their deeds of daring about the camp fires of wandering want, challenge the sympathetic admiration of all who read the story. Thanking you and the general committee for whom you speak, I accept the invitation, and will be pleased to join you in my own carriage, at such hour as you may name.

Very truly yours,  
ELI H. MURRAY.

Notwithstanding these letters of acceptance, not one representative of the Federal Government was present, unless in the general throng, during the celebration. What had caused them to reconsider their original design? Nothing new had occurred to constitute an affront. The inference is that mature reflection had convinced them that their presence at and participation in the Mormon celebration would be an act of impolicy. It certainly would have been in striking contrast to their partisan celebration, and would have placed the Mormons in a more favorable light than their opponents desired them to appear. “Mormon exclusiveness” had ever been a favorite Anti-Mormon theme, and anything which tended to show that the Saints were not as black as they were painted was foreign to the interests of those who felt it their political and religious duty to make war upon them.

Another interesting link in the history of that memorable occasion is furnished in the following letter from the chairman of the general committee to one of his subordinates:

SALT LAKE CITY, July 20th, 1880.

*O. G. Workman, Esq., Chairman Committee Mormon Battalion:*

DEAR SIR:—In answer to your strongly expressed wish to be allowed to carry arms in the procession on the 24th inst., accompanied with the statement that His Excellency, the Governor, had granted (through you) *the Mexican Veterans* the privilege to do so, I wish to state that the Mormon Battalion are not the only military organization that will appear in the procession on that day, and to grant one division the privilege of carrying arms while the others are denied that right would, I am sure, produce feelings which we very much wish to avoid.

While I view the order of Acting-Governor Black, depriving the Militia of Utah the right to carry arms even in procession, as proscriptive, unjust and tyrannical; yet I must remind you that our people have scrupulously observed said order since its issuance, and until the Executive of Utah shall see proper to countermand it I presume that as a people we shall continue to observe it.

Again, if you will think for a moment you will remember that these same *Mexican Veterans* are in the main members of the Utah Militia and some of them ranking officers. I feel assured that were they asked the question: "Will you as *U. S. soldiers to Mexico* avail yourselves of the privilege of carrying arms in procession, while you (the same persons) are deprived the right as *militiamen* to do so?" they would answer, "*We will not.*" I will lay the matter, however, before the committee to-night and if they wish to reconsider their action and decision in this regard and make a distinction in favor of the Battalion I will advise you, but would recommend that you do not engage your muskets until you learn further.

Very respectfully yours,

J. E. TAYLOR,

Chairman General Committee.

The members of the Mormon Battalion who marched in the procession four days later, did so without muskets or weapons of any kind.

The day of the arrival of the Pioneers in Salt Lake Valley was Saturday. So also was the day of this celebration. It was a general holiday and the city was thronged; many people being present from other parts. Stores and offices were closed, business was suspended and from public and private buildings the Stars and Stripes and other gay streamers saluted the sunrise. The weather was delightful. The dust—that discomfoting drawback to Utah's fair capital—had been carefully laid by the local Fire Department along the principal streets and the route to be traversed by the procession.

A grand and gorgeous pageant of over three miles in length, it began forming at eight o'clock on the morning of the 24th. Soon after nine it was in motion. It started at the call of Charles M. Evans, who wound a blast upon a battered old bugle said to have been used by the Pioneers while crossing the Plains. The procession marched and counter-marched on some of the principal streets and then proceeded to the Tabernacle.

At the head, in five wagons, rode the surviving Pioneers of 1847. The first wagon, which was drawn by eight horses, contained Wilford





*Jacob Weiler*



Woodruff, Orson Pratt, Charles C. Rich, Erastus Snow, Albert Car-  
rington, John Brown, Thomas Bullock, Horace K. Whitney, Aaron F.  
Farr, Zebedee Coltrin, Truman O. Angell and Thomas Grover. They  
were preceded by two horsemen—John Paek and Jacob Weiler—also of  
the Pioneers. A large portrait of President Brigham Young was carried  
in the foremost vehicle, over which floated the Pioneer banner and  
the American Flag. Next went the survivors of Zion's Camp and  
the Mormon Battalion, the latter accoutred in their ragged regimen-  
tals, with their tattered but honored old ensign waving above them.  
Following was a vehicle in which were several ladies, upon whose  
banner was inscribed, "We represent the women of the Mormon Bat-  
talion." In a carriage drawn by four black horses rode President  
John Taylor, Apostles George Q. Cannon, Joseph F. Smith, Brigham  
Young and Counselor Daniel H. Wells. In their rear were others of  
the Church authorities.

The most prominent features of pageant were:

The "Minute Men," on horseback, commanded by Colonel H. P.  
Kimball.

The Relief Society, in carriages, represented by Eliza R. Snow,  
Elizabeth Ann Whitney, Zina D. H. Young, Sarah M. Kimball, M.  
Isabella Horne, Bathsheba W. Smith, Elizabeth Howard, Sarepta M.  
Heywood, Minerva Snow, Maria W. R. Wilcox and others.

Conspicuous in the procession were three cars containing repre-  
sentatives of various countries—a man and woman from each—hold-  
ing shields with the national colors and the names of the nations or  
people represented. They were the United States, the American  
Indians, Canada, Hawaii, Holland, Germany, France, Spain, Switzer-  
land, Italy, South Africa, Sweden, Denmark, Norway, Iceland, Schles-  
wig-Holstein, Russia, Ancient Britain, England, Ireland, Scotland,  
Wales, Isle of Man, British India and Australia. Upon one of their  
banners was written: "I will gather you from all nations."

Upon the Sunday School car, in which were seated thirty-five  
children, selected from the Bishop's wards of the Salt Lake Stake,  
were the inscriptions: "Zion is Growing;" "We are 33,000 strong."

Pioneer Day was personified by twenty-four young couples on horseback, the ladies in cream-colored riding habits with white silk caps and white feathers; the gentlemen in black dress suits with white neckties and white gloves.

Education and the Drama were represented by splendidly decorated cars, in which Religion was represented by Miss Priscilla Jennings, History by Miss Talula Young, Geography by Miss Fanny Little, Science by Miss Josephine Beatie and Art by Miss Louie Wells. Miss Nellie Colebrook personified the drama, Miss Carrie Cogswell tragedy, Miss Rida Colebrook comedy, Harry Horsley history and Thomas Manning music. The Thespian car was followed by carriages containing the veterans of the Deseret Dramatic Association and the members of the newly organized Home Dramatic Club.

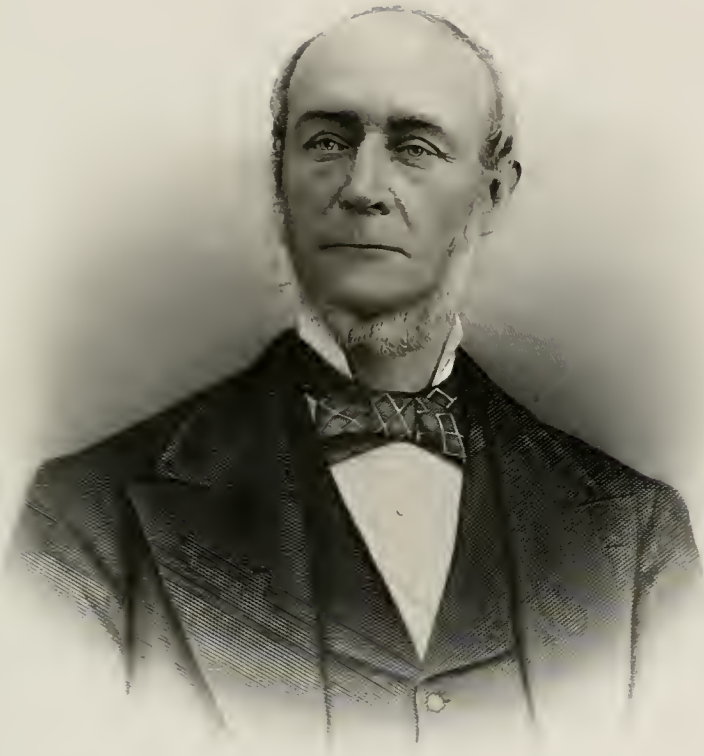
The Primary Associations, represented by a bevy of beautiful children, arrayed in white and seated in a mammoth sleigh—the “Julia Dean,” handsomely decorated and placed on wheels—formed one of the most pleasing sights in the procession.

The Pony Express comprised several horsemen with a banner, upon which was inscribed: “1860-1861. From the Missouri River to San Francisco in seven days and seven hours.”

Next were contrasted representations of Utah in 1847 and in 1880, the former a log cabin with primitive surroundings; the latter an elegant specimen of architecture superbly furnished and adorned.

The press and the various trades, professions and home industries all had places in the line.

To the music of brass and martial bands and amidst the shouts of the people the pageant wended its way to the Tabernacle, the interior of which, freshly festooned and decorated, presented a beautiful appearance. At the west end was portrayed, in living pictures, Utah as the Pioneers found her, and as she had since become under the blessing of Providence and the industry of her people. On the south side, under a scroll containing the figures 1847, was a pine grove surrounded by sage-brush, with figures of deer, buffalo and



*Aaron F Fair*



other wild animals showing among the branches. Near by arose a wickiup, before which sat an Indian family. To the north, under the figures 1880, stood a handsomely furnished modern dwelling, surrounded by a luxuriant growth of exotics, house-plants and various kinds of flowers and garden shrubbery, forming a beautiful arbor, under which were seated several ladies and children. Over all hung the Stars and Stripes.

The main features of the exercises that followed the seating of the multitude were as follows:

Prayer by Apostle George Q. Cannon.

Impromptu address on the triple theme of Zion's Camp, the Mormon Battalion and the Pioneers, by Wilford Woodruff.\*

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\* The survivors of the three organizations sat near him upon the platform. The names of the Pioneers present, with their addresses, were as follows:

Angell, Truman O., Salt Lake City,	Lewis, Tarlton, Richfield, Sevier Co.,
Atwood, Millen, Salt Lake City,	Pratt, Orson, Salt Lake City,
Allen, Rufus, Dixie,	Pack, John, Salt Lake City,
Bullock, Thomas, Coalville, Summit Co.,	Rolfe, Benjamin W., Salt Lake City,
Barney, Lewis, Sevier Co.,	Snow, Erastus, St. George,
Barnham, Charles D., Salt Lake City,	Smoot, William C. A., Sugar House Ward,
Brown, John, Pleasant Grove, Utah Co.,	S. L. Co.,
Brown, George, Round Valley, Wasatch Co.,	Stewart, James W., Farmington, Davis Co.,
Carrington, Albert, Salt Lake City,	Stewart, Benjamin Franklin, Payson, Utah Co.,
Cloward, Thomas P., Piondtown, Utah Co.,	Thomas, Robert T., Provo, Utah Co.,
Coltrin, Zebedee, Spanish Fork, Utah Co.,	Woodruff, Wilford, Salt Lake City,
Dewey, Benjamin Franklin, Salt Lake City,	Walker, Henson, Pleasant Grove, Utah Co.,
Egbert, Joseph, Kaysville, Davis Co.,	Whipple, Edson, Provo, Utah Co.,
Ellsworth, Edmund, West Weber,	Weiler, Jacob, Salt Lake City,
Farr, Aaron, Ogden City,	Whitney, Horace K., Salt Lake City,
Fitzgerald, Perry, Draper, S. L. Co.,	Whitney, Orson K., Salt Lake City,
Grover, Thomas, Farmington, Davis Co.,	Woodward, George, St. George,
Gleason, John S., Farmington, Davis Co.,	Woodsworth, William, Springville, Utah Co.,
Henrie, William, Farmington, Davis Co.,	Young, Clarissa Decker (wife of President B. Young),
Harper, Charles A., Big Cottonwood, S. L. Co.,	Flake, Green, (colored) Cottonwood, S. L. Co.,
Holman, John G., Pleasant Grove, Utah Co.,	Lark, Hark, Union, S. L. Co.
Johnson, Philo, Payson, Utah Co.,	

A paper by Apostle Orson Pratt, giving chronological statistics on the rise and spread of Mormonism. A portion of this document is here inserted:

*American Indians.*—In the autumn of 1830, Elders Oliver Cowdery, Parley P. Pratt, Peter Whitmer, Jr., Ziba Petersen and Frederick G. Williams, were sent as missionaries to the Indians, west of the State of Missouri, thus opening the Gospel to the remnants of Joseph.

*Canada.*—On the 20th of July, 1833, Elder Orson Pratt preached in Potten, Canada (north of the State of Vermont). This is supposed to be the first discourse, by the Saints of this dispensation, delivered in the British dominions. Joseph Smith and Sidney Rigdon preached and baptized, and organized a church west of Hamilton, in Canada, near the port of Lake Erie; and P. P. Pratt went on a mission to Toronto, in Canada, in 1836, and raised up and baptized and organized many churches.

*Great Britain.*—When a little over seven years had passed, Heber C. Kimball, Orson Hyde, Willard Richards, John Goodson, Isaac Russell, John Snyder, and Joseph Fielding were sent to England. They landed at Liverpool on the 18th of July, 1837. In a few months large branches of the Church were organized, mostly in Lancashire.

*Scotland.*—Elders Alexander Wright and Samuel Mulliner are believed to be the first missionaries to Scotland. A few were baptized in Paisley in the spring of 1840, and soon after a branch of over two hundred members was organized by Apostle O. Pratt in Edinburgh.

*Jerusalem.*—Apostle Orson Hyde was appointed by a general Conference, held in Nauvoo, Illinois, on the 6th of April, 1840, to a mission to the Jews in London, Amsterdam, Constantinople and Jerusalem. On Sunday morning, October 24, 1841, having arrived at the Holy City, he repaired to the Mount of Olives and offered up a dedicatory prayer, consecrating the land for the gathering of the remnants of the Jews.

*Australia.*—In July, 1840, Apostle George A. Smith ordained, at Burslem, England, William Barratt, and set him apart for a mission to South Australia. March 21, 1852, Elders John Murdock and Charles W. Wandell wrote that thirty-six were baptized in Australia.

*Wales.*—July 6, 1840, Elders Henry Royle and Frederic Cooke were appointed to Flintshire, Wales, and under date of October 30, 1840, a church of thirty-two members was established there. December 23, 1840, Elder James Burnham wrote from Wrexham, Wales, that in that region there were about one hundred Saints. And on February 10, 1841, two branches of the Church in Wales numbered one hundred and fifty souls. The Book of Mormon and other Church works were translated and published in the Welsh in 1856.

*Ireland.*—On the 27th of July, 1840, Apostle John Taylor, Elder McGaffie and Priest Black sailed from Liverpool for Ireland, and preached in Newry and Lisburne, baptizing two persons, staying about one week; he was followed in September by Elder Theodore Curtis. A small branch of the Church was organized at Hillsborough, numbering five persons.



*East Indies.*—Elder William Donaldson, a member of the army, and bound for the East Indies, sailed from England in August, 1840, having authority to do all the good possible in that far-off land. Elder Wm. Willes landed in Calcutta December 25, 1851, and a few days after baptized nine natives of the East Indies, subsequently baptizing some three hundred natives and raising up a branch of Europeans in Calcutta, numbering over forty members.

*Isle of Man.*—In September, 1840, Apostle John Taylor visited the Isle of Man, accompanied by Elder Hiram Clark and one or two brethren from Liverpool. He preached in Douglas, Peel and other places, baptizing and organizing several churches.

*South Sea Islands.*—Tooboui.—Elder Addison Pratt commenced laboring in the ministry, on the Island of Tooboui, about the last of April or the beginning of May, 1844, and baptized a few. Tahiti.—Elders Noah Rogers and Benjamin Grouard arrived on the Island of Tahiti on the 4th of May, 1841, and soon after commenced baptizing.

*France.*—Apostle John Taylor and Elders John Pack and Curtis E. Bolton were appointed to go on a mission to France at the October Conference, held in Salt Lake City, October, 1849; leaving Salt Lake City on the 19th of October. They were joined afterwards in England by Fred. Piercy, Arthur Stayner and Wm. Howell, the latter having previously visited France and baptized a few into the Church. They arrived in Paris in June, 1850. Churches were organized in Boulogne Sur Mer, Havre, Calais, Paris, and in other parts of France. There were between one and two hundred members in the French Conference.

John Taylor, assisted by Curtis E. Bolton, translated the Book of Mormon into the French language. He also stereotyped it and published an edition in Paris in 1852. He also published a monthly periodical in Paris, entitled *L'Etoile Du Deseret* (The Star of Deseret), besides a number of brochures or tracts.

*Denmark, Sweden, Norway and Iceland.*—At the General Conference held in Salt Lake City, October, 1849, Apostle Erastus Snow was appointed to open the door of the Gospel in Scandinavia. He was accompanied by P. O. Hansen, a native of Denmark, and John Forsgren, of Sweden. They were also joined in England by Elder George P. Dykes, and arrived in Copenhagen June 1, 1850. August 12, Elder Snow baptized in that city fifteen persons, and September 15, organized a branch of fifty members.

Elder John Forsgren was sent to Gefle, in the north of Sweden, where he baptized twenty persons, for which he was arrested and sent to Stockholm, August 8, where he was under surveillance of the authorities till September 11, when he was put on board a vessel for America, but escaped at Elsinore, in Denmark, and continued his labors with Elder Snow.

Elder George P. Dykes was sent to Jutland, arriving in Aalborg October 10, where and in the vicinity of which he labored six months, and baptized ninety-one persons.

September, 1851, Elder Peterson was sent by Elder Snow from Aalborg to Norway. He baptized a few persons and organized a branch at Bergen. Same year Elder Snow also sent from Copenhagen Elder Gudmansen, a native Icelfander, whom he had baptized and ordained to preach the Gospel on his native Island. He baptized several persons and laid the foundation for subsequent missionary labors there. During Elder Snow's stay of twenty-two months in Denmark about six hundred persons were baptized. The Book of

Mormon and Doctrine and Covenants were translated and published in the Danish language, as also a number of pamphlets in Swedish and Danish, and the *Scandinavian Stjerne* founded, which continues the organ of the Church in that country to this day.

*Italy and Switzerland.*—Apostle Lorenzo Snow and Elder Joseph Toronto were called at the Conference held at Great Salt Lake City in October, 1849, on a mission to Italy, and they started on their mission October 19. They were afterwards joined in England by Elders T. B. H. Stenhouse and Jabez Woodward, and on the 19th of September, 1850, they went up on a high mountain, a little distance from La Tour, and organized themselves into the first branch of the Church in that land. They tarried several months, during which upwards of twenty persons were baptized.

About this time branches of the Church were established in Switzerland, under the direction of Elders appointed by President Lorenzo Snow. The Book of Mormon and other English works were translated into the Italian in 1852.

*Jersey Islands.*—In August, 1849, Elder W. C. Dunbar wrote from Jersey Islands that forty-nine souls had been baptized within four weeks.

*Sandwich Islands.*—12th December, 1850, Elders Hiram Clark, Thomas Whittle, H. W. Bigler, Thomas Morris, John Dixon, William Farrer, James Hawkins, Hiram Blackwell, Geo. Q. Cannon and Thomas Keeler arrived at Honolulu, and soon after commenced preaching on the principal Islands. Elders Clark, Whittle, Morris, Dixon and Blackwell remained only a short time upon the Islands. The other five acquired the language. The first branch of the Church was organized in 1851, at Kula, upon the Island of Maui, by Elder George Q. Cannon, who also translated the Book of Mormon into the Hawaiian language, which he afterwards published in San Francisco, California, in the year 1855.

*Germany.*—Apostle John Taylor visited Germany the latter part of the year 1851. He translated the Book of Mormon into the German, assisted by G. P. Dykes, and published an edition of the same and stereotyped it; he also published a monthly periodical in Hamburg, entitled *Zion's Panier* (Zion's Banner). He also baptized and organized a branch of the Church in the city of Hamburg.

*Hindustan.*—June 24, 1851. Elder Joseph Richards wrote from Calcutta, stating that four persons were baptized in that distant land.

*Malta.*—June 28th, 1852. Elder Thomas Obray wrote that a branch of the Church was organized at Malta, numbering twenty-six members.

*Cape of Good Hope.*—Elders Jesse Haven, Leonard I. Smith and William Walker arrived at the Cape of Good Hope, April 18, 1853. In about four months they baptized thirty-nine persons.

*Holland.*—August 5, 1861. Elders Paul A. Schettler and Van der Woude arrived at Rotterdam, Holland. Elder Schettler translated several tracts into the Dutch language; but it was found almost impossible to make much impression upon the public mind. However, after several months' labor, they organized a branch of the Church at Amsterdam, numbering fourteen members.

Apostle Pratt having concluded, the nationalities, twenty-five in number, arose and ranged themselves in a line upon the platform,

facing the congregation. President Taylor, arising from behind them, said:

“The Lord commanded His servants to go forth to all the world to preach the Gospel to every creature. We have not yet been to all the world, but here are twenty-five nations represented to-day, and thus far we have fulfilled our mission.”

A poem, entitled “The Jubilee of Zion,” written for the occasion by O. F. Whitney, was read by Colonel David McKenzie. The poem comprised a succession of tableaux in Mormon history; one of the sections being descriptive of the entry of the Pioneers into Salt Lake Valley.

Elder B. F. Cummings read an interesting paper, giving comparative statistics of education in Utah and several of the States of the Union; much to the credit of the former. ¶The good work being done by the University of Deseret, the Brigham Young Academy of Provo, the Brigham Young College of Logan, and the district schools of the Territory (of which ¶President John Taylor was Superintendent) was also mentioned.

“Sentiments from the Women of Utah” were read in their behalf by L. John Nuttall.

President John Taylor then addressed the congregation, which was dismissed by benediction from Apostle Erastus Snow.\*

Various other events contributed to make the year 1880 a memorable one in Utah. Early in September no less a personage than the President of the United States visited the Territory and remained over night at Salt Lake City.

For many years Utah’s capital had been honored with passing calls by men and women of note. The most distinguished visitors, since President Grant, in October, 1875, had been Baron Lionel de Rothschild, the modern Midas, and Dom Pedro, Emperor of Brazil.

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\*The musical features of the program were furnished by Croxall’s and Symons’ bands, the Tabernacle Choir, the Careless Orchestra, the Union Glee Club, Professor Daynes the organist, Mrs. Sarah Langford and Miss Laura Nebeker.

Their visits, several months apart, and made in a purely private capacity, were not, like those of Presidents Grant and Hayes, the occasion of any public demonstration.\*

Whether or not the Federal officials and leading Gentiles sought to monopolize the attention of President Hayes, and preclude any reception or recognition on his part of the courtesies which the pioneers and founders of the Territory were anxious to extend, it is a fact that they arranged to be the first to welcome the Chief Magistrate, and in their program of preparations for that event the Mormon citizens were entirely ignored. The same feature had marred the reception given to President Grant. How he and Mrs. Grant, in spite of all, were favorably impressed with "the good Mormon people," insomuch that the former candidly confessed that he had been deceived in relation to Utah,† was narrated in the previous volume. A similar result attended the visit of President Hayes. Governor Emery, whom the non-Mormons placed at the head of their committee to welcome President Grant, was not now in office, having been succeeded by Governor Murray.

A few words, before proceeding, upon the situation in Utah at this time. Since the days of Judge McKean, the mutual sentiments of Mormons and Gentiles had not materially changed. While there were seasons when the feeling was less intense than at other times, and friendships not a few existed across the social border, the old prejudices remained, former feuds were not forgotten, and the same

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\* Baron Rothschild and party arrived at Salt Lake City on the last day of October, 1875. The Baron, accompanied by Prince Frederick of Wiltgenstein and Count Turenne, during their brief stay called upon President Brigham Young.

It was the 22nd of April, 1876, that the Emperor Dom Pedro and suite reached Utah's capital. They attended the Theatre in the evening, and next day, which was the Sabbath, visited the Tabernacle, Temple and other places. In the afternoon they attended divine service in the Fourteenth Ward Assembly Rooms, where the discourse was delivered by Apostle John Taylor. On the evening of the 23rd the Emperor left for San Francisco. Thence he returned East to the Centennial Exhibition, after which he proceeded to Europe.

† President Grant made this remark to Governor George W. Emery, who repeated it to the author.



*John Brown*



influences that caused the original breach between the two classes of the community were constantly at work to perpetuate and widen it.

Of all the agencies having this as their object none were more active or more influential than the Salt Lake *Tribune*, the journalistic mouth-piece of Anti-Mormonism. Day after day it thundered forth its denunciations of "polygamy," "priestcraft," "treason" and "rebellion," aiming its shots at "the dominant Church" and those who defended it, and calling upon the Government to solve the Utah problem with drastic legislation or the sword. Others not upon the staff of the *Tribune* did likewise.

Much of this talk was merely for effect. Some who uttered it earned their bread by assailing the Mormons. Such would not have had the situation any different. A cessation of hostilities would have been deemed by them a misfortune. Polygamy did not shock them, as they pretended. Neither did political "bossism," so long as it was confined to their own party. The private lives of some were of such a character as to quite unfit them to cast the first stone at any doctrine or system supposed to pander to the lusts of the flesh.

Others of the Gentiles were of a different stamp entirely: men of pure life and earnest purpose, who honestly believed Mormonism to be the embodiment of treason and licentiousness, and that it ought to be extirpated. With them "polygamy," "disloyalty," etc., were not mere catch-words to win votes and enlist sympathy for their cause. That a small minority were able by such means to unify the Gentiles, almost to a man, in political and all other plans for the overthrow of Mormonism, testifies to the sincerity, at least, of the main body. We except, of course, those who joined in the general hue and cry through fear of the lash of the Anti-Mormon press.

Since the McKean period a better class of officials had been representing the Federal Government in Utah. It was difficult, however, for the majority of them to act fairly in the face of what they knew would follow. Let them refuse to unite with the Mormon-haters and they were forthwith placed in the category of "Jack Mormons," and harassed at every turn. The *Tribune* would belch

forth its terrible thunders and demand the removal of the offending official who had dared to have a mind of his own and act independently of Anti-Mormon dictation.

A notable example of courage and independence under this kind of treatment was Governor Samuel B. Axtell, who was shamefully abused and finally removed from office, for no other reason than that his conduct did not please the all-powerful cabal known as "The Ring." Governor Axtell simply insisted upon being what the *Tribune* called upon every American to be, a free man. He held it right and proper to visit Mormons as well as Gentiles at their homes, to travel freely through the settlements, and warm with the rays of his genial presence the entire community; to be, in a word, the Governor of the people, and not the tool of a clique. For this he was lampooned and libeled without mercy, and eventually removed from office; not in disgrace, however, for he was given an honorable appointment in Arizona. It is needless to say that it was not Anti-Mormon influence that secured for him his new position, though it was due to that influence that he left Utah.

Of Governor George W. Emery, who received his appointment to this Territory in 1875, and served until 1880, it may be said that while he affiliated almost entirely with the Gentiles, he pursued a conservative course, such as won for him the respect and esteem of all classes. He was a New England man by birth and breeding, but was living in Tennessee when appointed Governor of Utah. He was a personal friend of President Grant, and it was upon his advice that the latter visited the Territory.\*

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\* Ex-Governor Emery, on a visit to Utah in October, 1893, stated to the author that his course in this Territory was conformable, not only to his own feelings, but to advice given him by President Grant while at Salt Lake City. The President had transferred Governor Axtell to Arizona to appease the clamor of the Anti-Mormons, but it was not his wish that Axtell's successor should take them as his advisers. "Deal justly between man and man, avoiding all extremes," was the substance of Grant's counsel to his friend.

During Governor Emery's term of office the Territory was prosperous, and considerable useful legislation was enacted. The California Penal Code and Practice Act were



Some of the officials sent to Utah were Mormon-haters from the beginning. Such needed no dictation from the tripod of the *Tribune*. Like the war-like Moor of Venice, they "knew their cue to fight without a prompter." With pleased alacrity they ranged themselves upon the Anti-Mormon side, intent only upon dealing the Mormon cause "swashing blows." Others came upon the scene unbiased, but were prejudiced after their arrival; or, fearing loss of prestige if they refused to yield to the pressure brought to bear upon them, they succumbed to persuasions or threats and enlisted more or less reluctantly under the same banner.

The great idol of the Anti-Mormons was Governor Eli H. Murray. He was commissioned on the 28th of January, and entered upon the duties of his office about the first of March, 1880. He was from the State of Kentucky. While not a man of large mental caliber, nor over-scrupulous in the use which he made of his power as a Federal official, neither was he destitute of ability, nor devoid of superior traits of character. A hospitable and convivial soul, his chief delight seemed to be to entertain well and be well entertained. He was considered a handsome man, was tall and of fine physique, and had been an officer in the Union Army, accompanying Sherman in his famous "March to the Sea." He was also a lawyer and a journalist. Courteous and amiable, he easily made friends, having

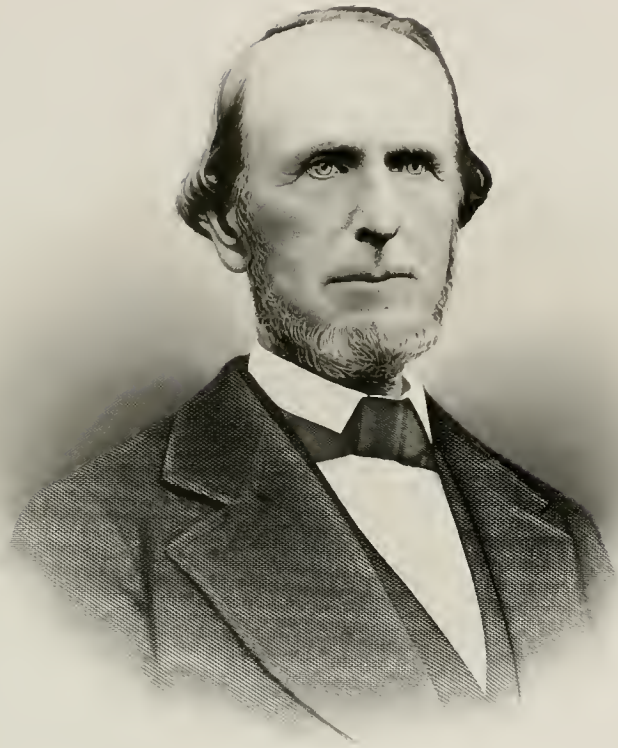
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adopted and the Laws of Utah compiled. A District Court was established at Ogden through the influence of the Governor, who, in April, 1880, was presented with a handsome gold watch by the citizens of that town "regardless of party," for his services in securing to Northern Utah that signal advantage. On February 12th, of the same year, a bill creating Emery County out of portions of Piute, Sevier, and Sanpete counties, had passed the Legislature and been approved by Acting-Governor Thomas; San Juan and Uintah counties being called into existence at the same time. Governor Emery did much to bring about the prosecution of John D. Lee, for the Mountain Meadows massacre. He was anxious that the guilty should suffer for that awful crime, in order to wipe the stain from Utah's escutcheon, and lift the burden of unjust blame from the shoulders of the Mormon Church. John D. Lee had told Governor Emery that Brigham Young was in no way responsible for the massacre. The Governor also recommended to the Legislature the advisability of enacting laws that should circumscribe and eventually put an end to polygamy.

some among the Mormons, while among the Anti-Mormons his admirers were many. He affiliated with the latter almost exclusively, and placed himself and his office practically in their hands.

Nor was this a mere servile yielding to their autocratic demands. Governor Murray was not lacking in will power and strength of character. It was not through fear—whatever part policy or personal interest may have played in the matter—that he became the executive agent of “The Ring.” He hated the Mormon Church—the Mormon religion—but not the Mormon people. He was naturally kind-hearted, a loving husband, a fond father, and not deaf to the appeals of distress. His frequent use of the veto power upon the acts of the Legislature rendered him execrable to the Mormons at times, but they remember also that he as freely employed the pardoning prerogative in behalf of imprisoned polygamists. He once remarked that the polygamists of Utah, Gentiles as well as Mormons, were the brainiest men in the community.

In a public way, Governor Murray first gave evidence of his Anti-Mormon bias in his speech delivered at the Gentile celebration of Independence Day, a few months after his arrival in Utah. Excepting July 4th, 1871, when Mormons and non-Mormons, unwilling to coalesce, held separate celebrations, this was perhaps the first time that the Gentiles of Salt Lake City had attempted to publicly celebrate the Nation's birthday. As for the Mormons, while to appropriately observe it had once been their custom, since 1871, when, by the edict of Acting-Governor Black, the troops of Fort Douglas were ordered to fire upon the militia if they bore arms in honor of the day, their ardor had somewhat cooled, so that of late years they had suffered the anniversary to pass without burning much powder as incense to Liberty, or making many speeches in her praise. It seemed to them that the fair goddess had forsaken the Rocky Mountain region, and they did not see the propriety of worshipping an absent deity. This fact had been taken advantage of by their opponents, who used it as an argument to impugn the loyalty of the Mormon people. It probably gave Governor Murray the cue



*George Woodward*



for his Fourth of July speech, already cited. The Governor's sentiments, which were the views of the Anti-Mormons, with the quoted strictures of the Mormon press thereon, afford a fair reflex of the public feeling in Utah in the latter part of 1880, the time of President Hayes' visit. That event we will now describe.

The first intelligence of the President's coming was received by General John E. Smith, the commander at Fort Douglas. On the evening of August 20th a meeting of Federal officials and other non-Mormons was held in the Walker House parlors to make arrangements for his reception. The exact date upon which he would arrive was unknown, the telegram to General Smith merely stating that the Presidential party, including General Sherman, Secretary Ramsey and their families, would reach Salt Lake City early in September. A committee was appointed to ascertain the date of arrival and arrange for a suitable reception. The chairman of this committee, which was composed entirely of non-Mormons, was Governor Murray.

As soon as it became known that President Hayes and his party would visit Utah's capital, the municipal authorities took steps to receive the distinguished visitors and tender them the hospitalities of the city. Their Committee on Reception, which included gentlemen of all parties, was instructed to invite the Federal officials and United States Army officers in the Territory to participate in the proceedings. The following telegram was prepared and sent to Washington:

SALT LAKE, August 25, 1880.

*His Excellency, Rutherford B. Hayes, President of the United States,  
Washington, D. C.*

The municipal authorities of Salt Lake City, having learned that it is your Excellency's intention to visit here awhile, *en route* to the Pacific Coast, acting in behalf of all its citizens, respectfully tender yourself and party the courtesies and hospitalities of the city. A committee of representatives has been appointed, who, upon learning your wishes, will meet you at Ogden and escort you to the city.

FERAMORZ LITTLE, Mayor.

On September 1st, no answer to the message having been received, it was repeated to Chicago, and next day came this reply:

GALESBURG, ILLS.,

September 2, 1880, 4:50 p. m.

*Mayor Little:*

I am in receipt of your invitation in behalf of the city authorities, and thank you for your courtesy. By prior arrangement I am to be the guest of the Governor, and hope you are acting in concert.

R. B. HAYES.

The receipt of this telegram put a stop to all arrangements that were being made by the city authorities. The kindly suggestion to "act in concert with the Governor" was duly appreciated by the Mayor and his associates, who, however, saw no way of carrying it into effect, the Governor and his committee having ignored them. All that the Mayor and his colleagues could do was to abandon their preparations, and as private citizens join with the people in giving welcome to the Nation's chief.

The Mormon Church authorities, however, did not propose to be thus circumvented. On the morning of the day that the President was expected to arrive—Sunday, September 5th—a special train, furnished by Superintendent John Sharp, bore to Ogden the following named persons: President John Taylor, General D. H. Wells, Hon. George Q. Cannon, Hon. Angus M. Cannon, Bishop John Sharp, Hon. William Jennings, General H. S. Eldredge, Elders David O. Calder, H. W. Naisbitt, Theodore McKean, C. W. Penrose, and a number of ladies. Their train reached the Junction City a few minutes after eleven.

An hour and a half later, the Union Pacific train carrying President Hayes and his party, and consisting of five coaches drawn by a gaily decorated locomotive, rolled into the Ogden depot. One of the coaches held Governor Murray and his committee, who had gone out as far as Weber station to meet the President. A multitude, including Hon. F. D. Richards and other prominent citizens of Ogden, had assembled at the station, and as the train came in, its occupants were greeted with cheers from the people and with music from the Ogden brass band.

President Hayes, called on for a speech, was introduced by

Governor Murray, but excused himself from making an extended address, owing to its being the Sabbath. Secretary Ramsey spoke briefly to the same effect, and General Sherman, in response to loud calls, added a few words of thanks for the warm reception.

The four coaches containing President Hayes and his party were then attached to the two coaches in which sat President Taylor and his friends, and the Utah Central engine, tastefully decorated with the Stars and Stripes, having been placed in the lead, a start was made for Salt Lake City. As the two trains came together, President Hayes, from the front platform of his car, recognized Delegate Cannon, on the rear platform opposite. Hearty handshakings followed, and the Mormon leader and his party were then introduced to the President of the United States, who received them with marked affability. The train being clear of the station, visits were interchanged by the occupants of the two sections. President Hayes went into the Utah Central cars and chatted pleasantly with President Taylor and his associates until called to luncheon, when Secretary Ramsey took his place. He in turn was succeeded by General Sherman, who remained until the train reached Salt Lake City.

Meantime Mrs. Hayes had invited the Mormon ladies into her car, where the time was passed in a most agreeable manner. At Farmington and Wood's Cross large numbers of people, including many children, had assembled. The tourists hailed the little ones with delight. The President and Mrs. Hayes reached down to shake hands with them, not missing even the smallest, and were greatly pleased at the tokens of respect exhibited all along the line.

Reaching Salt Lake City, the street up which the President and his party were to pass was found to be thronged with people, old and young. The Tabernacle congregation had been dismissed, at their own desire, to enable them to see and greet the President; and the Mormon Sunday schools were out in force for the same purpose. Running the gauntlet of their salutations, which were graciously returned, the President and his friends, in carriages, were driven

rapidly up South Temple Street and down Main Street to the Walker House.

At the hotel the President came out upon the portico, and an immense audience having assembled in the street below, Governor Murray introduced to them the President of the United States. The latter was cheered as he came forward and spoke briefly, saying in substance that owing to the day and the circumstances he did not consider it proper to make a formal speech. Like all other strangers who entered the wonderful city of Salt Lake he was astonished at what he had beheld. Begging to be excused and thanking the people for their hearty welcome and kind reception, he retired.

The Governor then introduced the honorable Secretary of War. Mr. Ramsey thanked the people for the splendid reception given the Presidential party. Surprises had met them all along the route westward, but the reception at Salt Lake City had exceeded them all. The appearance of the people generally was beyond anything they had seen. Again expressing his thanks, the Secretary gave way.

General Sherman, who scarcely needed the introduction preceding his speech,—the war-wrinkled but kindly visage of the veteran being familiar to most of those whom he addressed,—spoke as follows :

*Friends and Fellow Citizens :*

Following the example of my chief—indeed, I may say my two chiefs—I ought to say nothing; but I cannot look upon this crowd of people, and upon the scenery on my right and on my left hand without saying a few words of praise to those who have come to this desert land and made it to blossom as the rose. [Cheers and applause.] An old philosopher remarked, before any of us were born, that he who made two blades of grass to grow where only one did before, was a public benefactor. Now, the people who have made the pears and apples and the peaches and the wheat and clover and grass to grow, where but a short time ago there was nothing but the sage brush to be seen, are entitled to our thanks as public benefactors.

The President will in due time and on all proper occasions recognize your kindness to him—not here but elsewhere; for he takes notes of everything as he goes along—and he is so familiar with the history of this people that when the time comes that he can say a kind word for you he will do it. [Great applause.] All I want to say this Sunday afternoon is this: Go on as you have begun, make homes for yourselves and your



children and be half as good as you know how to be, and you will be good enough for this or any other valley.\* [Applause.]

I beg you will excuse me from saying anything further excepting that we intend spending all of today and part of tomorrow in your city, and will do the best we can to view the internal arrangements, the garrison on the hill-top, and anything else that we can overtake. We are, I may say, on the road to California with all speed, and we can't stop. Those fellows in California hold a lariat around our necks and we have got to go on and make the best of our time. [Laughter and applause.] In the meantime, one and all, we thank you for the hearty reception given unto us thus far. [Great applause and cheers.]

In response to a general call, Mrs. Hayes appeared upon the balcony and bowed to the three hearty cheers given in her honor. The party then retired to the interior of the hotel, and the crowd dispersed.

Monday morning's program for the Presidential party included brief calls at the Tabernacle, Temple and other points of interest.† From ten until eleven a public reception was held at the Walker House parlors, and the party then re-entered their carriages and drove to Fort Douglas, where they met General Smith and staff and were greeted with an artillery salute. After luncheon at the Fort the visitors returned to the city and at one o'clock a special train bore

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\*General Sherman in conversation with President Taylor, Apostle Richards and others on the Utah Central train, expressed his surprise at the improvements perceptible on the route and said that in his opinion a people who could make a living out of such materials and elements and be reasonably happy, were entitled to all that they could make and ought not to be disturbed.

† The register at the Temple Gate gave the names of most of the President's party, which was composed as follows: President R. B. Hayes, Mrs. Lucy W. Hayes, his wife; B. A. and R. P. Hayes, their sons; Mr. Mitchell, of Columbus, Ohio; Mr. and Mrs. John W. Herron, of Cincinnati; Dr. Huntington, U. S. A., Surgeon of Soldiers' Home, Washington, D. C.; John Jameson, Assistant General Superintendent Railway Mail Service, of Washington, D. C., in charge of the President's party; Hon. Alex. Ramsey, Secretary of War, who joined the party at Omaha; and Lieutenant Noyes, who joined it at Cheyenne. The names of General Sherman's party were: General W. T. Sherman and daughter Miss Rachel; Mrs. Colonel Audenried; Colonel Barr, Judge Advocate of the War Department; Mrs. Barr, and General A. McDowell McCook, Lieutenant Colonel of Tenth Infantry and Aid to General Sherman.

them to Ogden. The following named gentlemen, with a number of ladies, accompanied them to that point: President John Taylor, Apostles Orson Pratt, George Q. Cannon, Joseph F. Smith, General D. H. Wells, Messrs. Angus M. Cannon, Joseph E. Taylor, L. W. Hardy, R. T. Burton, William Jennings, H. S. Eldredge, C. W. Penrose, John R. Park, James Jack, David McKenzie and Horace K. Whitney. They bade President Hayes and his party God-speed as they resumed their journey westward.

Two distinguished members of the party were destined to return and reside for several years in Utah. We refer to General A. McDowell McCook, who succeeded General Smith as commander at Fort Douglas; and Secretary Ramsey, who was the first chairman of the Utah Commission, created by the Edmunds Law.

The month following the visit of President Hayes witnessed the reorganization of the First Presidency of the Mormon Church, which had remained vacant since the death of Brigham Young, in the summer of 1877. A little over three years the Church had been without its supreme presiding Council. About the same length of time had intervened between the death of Joseph Smith and the reorganization of the Presidency with Brigham Young as its central figure. The afternoon of October 10, 1880, the fifth day of the regular Semi-Annual Conference of the Church, was set apart for the installation of his successor. The personnel of the new Presidency had already been agreed upon by the Apostles. It had also been sanctioned by a large assembly of the Priesthood on the evening of October 9.

A feature of the proceedings next day was the voting of the various councils and quorums, one after another, in order of authority. The following assignment of places in the Tabernacle had been made previously: The Twelve Apostles were to occupy their usual seats in the Stand; Patriarchs, Stake Presidencies and High Councils, the platform space south of the Stand; High Priests, the north center of the house, and the Seventies the south center; the Elders were to sit immediately behind the High Priests, and the

Priests, Teachers and Deacons on the north side of them. The gallery was open to the general public.

President John Taylor called the assembly to order, and after the usual devotions, the venerable Apostle Orson Pratt took the Stand and presented the general Church Authorities. The manner of voting was for each body of Priesthood, as called upon, to arise and manifest by the uplifted right hand its assent to or dissent from the propositions submitted. The order of voting was as follows: (1) the Twelve Apostles, (2) Patriarchs, Stake Presidencies and High Councils, (3) High Priests, (4) Seventies, (5) Elders, (6) Bishops and their Counselors, (7) Priests, Teachers and Deacons. The Presidents of quorums then voted in like manner, after which the general congregation was called upon to arise *en masse*, with the Priesthood, and sustain the nominations. The voting was all unanimous, and the sight presented was impressive in the extreme.

It was first proposed that John Taylor be sustained as Prophet, Seer and Revelator and President of the Church of Jesus Christ of Latter-day Saints in all the world.

Second—That George Q. Cannon be sustained as First Counselor in the First Presidency.

Third—That Joseph F. Smith be sustained as Second Counselor in the First Presidency.

Fourth—That Wilford Woodruff be sustained as President of the Twelve Apostles.

Fifth—That Wilford Woodruff, Orson Pratt, Charles C. Rich, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Albert Carrington and Moses Thatcher\* be sustained as members of the Council of the Apostles.

Sixth—That John W. Young and Daniel H. Wells be sustained as Counselors to the Twelve.

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\* Elder Thatcher had been an Apostle since April, 1879, having been ordained on the 7th of that month to fill a vacancy caused by the death of Orson Hyde. The latter, who was one of the original Twelve Apostles of the Church, died at Spring City, Sanpete County, November 28, 1878.

Seventh—That Francis Marion Lyman be sustained as an Apostle in the Council of the Twelve.

Eighth—That John Henry Smith be sustained as an Apostle in the Council of the Twelve.

Then followed the presentation of the other general authorities.

Thus was the First Presidency reorganized. By this action three vacancies were created in the Council of the Apostles, two of which were filled immediately by the calling and ordination of Elders Lyman and Smith. One vacancy remained, and on October 3, 1881, another was caused by the death of the veteran, Orson Pratt. It was not until October 13, 1882, that the organization of the Council was again rendered complete by the calling of George Teasdale and Heber J. Grant to the Apostleship.

At the April Conference of 1879 it had been decided to select a suitable building to be fitted up and furnished as an official residence for the President of the Church. The Gardo House, a beautiful mansion erected by President Young on the corner of South Temple and First East Streets, was chosen for this purpose. The property had been in litigation in the suit of the Heirs *vs.* the Executors, but the title had been confirmed to the Church in the compromise settlement that followed. The mansion, finished and elegantly furnished at a cost of about fifteen thousand dollars, was made ready for the President's occupancy by the latter part of December, 1881, and he and his family, agreeable to the suggestion of the Committee of Arrangements—Moses Thatcher, William Jennings and Angus M. Cannon—forthwith moved into it.

A public reception was given by the President at the Gardo House on Monday, January 2, 1882, when over two thousand citizens called to pay their respects to the venerable head of Mormondom. Little knew the President and his friends, on that seemingly auspicious day, that his residence within those palatial walls would be so brief. At that very hour, when with smiling face and extended hand he welcomed across the threshold of the hospitable and elegant mansion those who thronged to tender him



*George Teasdale*



their congratulations, the clouds were fast gathering that were destined to break in fury upon that aged head, driving him forth an exile, even unto death.

## CHAPTER V.

1880-1881.

GOVERNOR MURRAY REVERSES THE PEOPLE'S WILL—HE GIVES TO ALLEN G. CAMPBELL, THE DEFEATED LIBERAL CANDIDATE, THE ELECTION CERTIFICATE BELONGING TO GEORGE Q. CANNON, THE PEOPLE'S CHOICE FOR DELEGATE TO CONGRESS—HOW THE NATION VIEWED THE ACT OF WRONG—THE GOVERNOR EXCORIATED BY THE AMERICAN PRESS—LEGAL PROCEEDINGS IN THE CONTEST FOR THE DELEGATESHIP—THE CLERK OF THE HOUSE OF REPRESENTATIVES PLACES GEORGE Q. CANNON'S NAME UPON THE ROLL—THE DELEGATE'S CITIZENSHIP ASSAILED IN COURT—JUDGE HUNTER DISMISSES THE CASE—THE UNFAIR USE MADE OF HIS DECISION—MEMORIAL SERVICES IN HONOR OF PRESIDENT GARFIELD—THE MORMONS FALSELY ACCUSED OF PRAYING FOR HIS DEATH—A CRUSADE OF CALUMNY—ANTI-MORMON MEASURES INTRODUCED INTO CONGRESS.

NOVEMBER, 1880, saw the beginning of a political contest famous in the history of Utah and more or less noted in the annals of the Nation. It was the Cannon-Campbell contest for the Delegateship, so named from the two champions in the controversy: Hon. George Q. Cannon, the candidate of the People's party, and Hon. Allen G. Campbell, the standard-bearer of the Liberals. While ostensibly a simple election for Delegate to Congress, it was in reality the second step in a movement against Mormonism more serious and far-reaching in its effects than anything that had taken place since the death of Joseph Smith and the migration of his followers to the Rocky Mountains.

For several years the cause of Liberalism, in spite of the agitation kept up by its orators and newspapers, had been languishing, apparently hopeless of success. Such had been the indifference of its leading spirits that they had allowed several elections, including one or more elections for Delegate to Congress, to pass without the formality of putting up a party candidate. The result of the contests inaugurated after the elections of 1872 and 1874, when Messrs.





Geo. R. Cannon



Maxwell and Baskin failed successively in their attempts to unseat Delegate Cannon, had doubtless done much to dishearten them; while the success of the People's party in Tooele County, in 1879, overthrowing the so-called "Republic of Tooele" and rescuing that afflicted section of the Territory from Liberal misrule, had added another wet blanket to the load of discomfort weighing them down.\*

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\*How Tooele County was captured by the Liberals has been shown. The manner in which it was rescued was as follows :

Four-and-a-half years of the regime set up under the name of the "Republic of Tooele" had told severely upon the financial status of that portion of the Territory. Its treasury, which, when the Liberals assumed control, contained a surplus of about two thousand dollars, when they went out of power was empty, and the county was fourteen thousand dollars in debt. Its warrants, formerly at par, had depreciated until worth less than ten per cent of their face value. Five years' revenue—over thirty-five thousand dollars—and an additional sum of sixteen thousand dollars, including the county debt and about twelve hundred dollars not accounted for but known to have been collected as taxes on transitory herds of sheep, had been squandered, with little or nothing to show for it in the nature of public benefits. Such were the fruits of this short reign of Liberalism in a single county of the Territory.

The fraud by which the Liberals seized upon and held control of Tooele County was made possible by the lack of a registration law. At that time—August, 1874—the only qualifications for voters were that they should be taxpayers and residents of the Territory for six months preceding the election. As voting was restricted only by challenges at the polls, it may readily be seen how easy it was, where judges of election were in sympathy with such proceedings, to stuff the ballot-boxes. On August 3rd—the day of the election—there were less than fifteen hundred taxpayers in Tooele County, yet on that day more than twenty-two hundred ballots were deposited in the boxes. Consequently, over seven hundred illegal votes were cast. For most of these the Liberals were responsible. Such of their opponents as voted illegally—about one hundred in all—did so under the mistaken impression that their naturalization papers, issued by the Probate Court, invested them with full privileges of citizenship. The other law-breakers had no such excuse. Their purpose was to carry the election by fair means or foul. A contest arose, the matter was thrown into court, and Judge McKean and Governor Woods, by the exercise of their official power, did what had been left undone toward the fraudulent capture of the county.

Paralyzed by the unblushing effrontery of this crime, which had wrested from them the control of a section in which their votes predominated, the People's party in Tooele County for several years took little or no interest in politics, but patiently awaited the advent of a more auspicious era, when better governors and judges should hold sway and the chances for throwing off the yoke of the usurpers be more plentiful. It came when the Legislature, in 1878, enacted a registration law, the approval of which by Governor

What had caused the change that now came over them? What had dispelled their apathy? What meant this sudden exhibition of energy on the part of the all but effete organization? Had the Gentile population of Utah so augmented that there was good ground to

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Emery was bailed by the majority in the so-called "Republic" as a harbinger of political freedom. By this law every elector was required to make affidavit as to his qualifications, and a stability of residence had to be maintained. Appropriate penalties were provided for illegal voting.

The new law went into effect in February of that year, and in the following July an enthusiastic campaign was inaugurated by the People's partisans of Tooele County. Their ticket was as follows: Representative to the Legislature, Francis M. Lyman; Probate Judge, Hugh S. Gowans; Selectmen, S. W. Woolley and D. H. Caldwell; Sheriff, John Picket; Coroner, John Gillespie; Assessor and Collector, W. R. Judd; Treasurer, Thomas Atkin, Jr.; Recorder, F. M. Lyman; Superintendent of District Schools, Joshua R. Clark; Prosecuting Attorney, Lysander Gee. The Liberal candidate for Representative to the Legislature was E. M. Wilson.

The election took place early in August, and the Liberals were badly beaten. They were determined, however, to retain control. The County Clerk and Court—all Liberals but one Selectman—refused to canvass the returns of the election. The excuse given for this refusal was that some of the ballot boxes were sealed with mucilage, and not with sealing wax. The statute did not name any material for the purpose, merely requiring that the boxes be securely locked and sealed.

The County Court at this time consisted of W. B. Schuyler, Probate Judge, and Daniel W. Rench, E. C. Chase and William C. Rydalch, Selectmen; Enoch F. Martin was County Clerk. Mr. Rydalch uniformly dissented from the majority of the Court in their unlawful procedure. Upon their refusal—August 9th—to count the ballots, Mr. Lyman made an application to the Third District Court for an order requiring the recalcitrant officers to act as the statute directed.

The case came on for hearing on August 20, and on the 27th Judge Schaeffer issued a writ of peremptory mandamus directing the canvass to proceed. From this order the Liberals took an appeal to the Supreme Court of the Territory, the basis of their claim being that the new registration and election law was invalid. A stay of proceedings was granted, and the matter went over till February, 1879, when a majority of the Court—Chief Justice Schaeffer and Associate Justice Emerson—affirmed the validity of the law in question; Associate Justice Boreman dissenting. The order of the higher tribunal was that the Clerk of the County Court of Tooele "open all the returns of the said election from the various precincts of said county, carefully examine the various lists constituting said returns, and if no irregularity or discrepancy appear therein affecting the result of the election of any candidate, then to accept said returns as correct and declare elected the candidate for any office appearing from said returns to have received the highest number of votes for such office."

On March 1st the County Court convened to obey the writ of peremptory mandamus.



David H. Caldwell



believe a Liberal victory at the polls possible? Or had Congress, in response to oft-repeated prayers, passed some sweeping measure disfranchising the majority of the citizens of the Territory, placing *hors du combat* the People's party, and leaving the offices that were wont to be theirs within easy reach of their ambitious opponents?

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The ballot boxes from Batesville, Grantsville, Tooele, Mill, Quincy, St. Johns, Vernon and Lake View precincts were securely sealed and accompanied by envelopes containing the returns of the judges of election, with the registry lists, poll lists, etc., each properly certified. The Ophir returns were thrown into the ballot box unaddressed. Twenty-seven unregistered persons had been allowed to vote in that precinct. From Deep Creek no returns had been sent with the box. The Rush Lake and Lewiston returns were thrown in even more carelessly than those of Ophir. At Jacob City the entire registration was 273, but the returns showed that 329 votes had been cast, of which eighty-two were by nonregistered persons. Of the entire number of voters in this precinct, only thirty were actually taxpayers. At Stockton, fifteen non-registered individuals had been permitted to vote, one of them being W. B. Schuyler, the Liberal Probate Judge. It is a significant fact that the irregularities noted were from precincts where the vote was overwhelmingly Liberal. In the face of the explicit directions given in the mandamus, the canvassing board (Mr. Rydalah dissenting) had the audacity to adopt the following motion: "On account of the insufficiency of what purports to be the returns from all the precincts of this county, that we reject all the returns except those from Ophir and Lake View precincts, and declare the result from them." By this chicanery they made it appear and declared that the Liberal candidates were elected by majorities ranging from eighteen to twenty-five votes.

Mr. Lyman and his confreres were not in a situation compelling them to submit to such an outrage. The case was again in the District Court on March 25th, by which time the obstructionists had learned that their contemptuous proceedings would not be tolerated. Their attorney, Mr. Baskin, stated to the Judge that owing "to a misapprehension of the scope of the decision of the Supreme Court, and upon consultation with the counsel for the other side, it is agreed to postpone the case until next Wednesday (April 2nd) when the returns will be made."

The count was completed on March 29th, and the People's party candidates were shown to have been elected by majorities ranging from 268 to 343 each. The vote by precincts for Representative was: Lyman—Ophir, 14; Rush Lake, 3; Lewiston 4; Batesville, 49; Grantsville, 243; Tooele, 262; Jacob City, 7; Mill, 29; Quincy, 14; St. Johns, 86; Vernon, 37; Stockton, 13; Lakeview, 30; total, 791. Wilson—Ophir, 67; Rush Lake, 14; Lewiston, 4; Grantsville, 4; Tooele, 24; Jacob City, 322; St. Johns, 1; Stockton, 62; total, 498. The 124 non-registered votes were given to the Liberals.

The retiring Judge and Clerk were very ill-natured over the failure of their scheme to retain office, and vacated without turning over the records to their successors, or even

No; neither of these consummations, however devoutly wished by the latter, had been realized. Undoubtedly there had been some increase in the local population, but it was not exclusively or especially non-Mormon;\* and as for the disfranchisement of Mormon voters, that was an event yet in the future. History may not hit upon all the reasons for that change of policy, but we think we can name one. It was that the whilom lethargic Liberals now had a Governor who was a man after their own hearts, who could be relied upon to assist in the furtherance of any scheme having as its object the discomfiture of Mormonism. This fact doubtless did much to cause the political revival in question.

The Territorial convention of the People's party met at Salt Lake City on the 7th of October, and nominated as their candidate for Delegate to Congress Hon. George Q. Cannon, who had served

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giving the combination of the vault lock. It was only by being threatened with a legal prosecution that Clerk Martin had been induced to sign the certificates of election.

Proceedings for the recovery of the taxes collected but not accounted for by the late rulers of the "Republic" were subsequently instituted, but nothing was ever realized. That the money had been received by the Collector, or his deputy, was apparent. Nearly all the receipts for it had been issued by that deputy—Edward Bird—who, upon evidence furnished by F. M. Lyman—the records and receipts of the Collector's office—was indicted by the Grand Jury. The Collector, David Mitchell, was not proceeded against, as Mr. Lyman did not believe him guilty. Bird's trial was postponed on one pretext and another until three years had passed from the time of the commission of the offense, after which Mr. Mitchell made affidavit to the effect that all the monies received for by his deputy had been turned over to him several months before the finding of the indictment. This admission freed Bird from blame, and the statute of limitations intervened to shield Mitchell from prosecution. Bird's trial took place in the Third District Court in February, 1882, and on the 15th of that month he was acquitted.

So ended the reign of the "Tooele Republic." Under the change of administration inaugurated in 1879, the county in eight years was freed from debt, and its warrants, which were almost worthless when the Liberals went out of power, were again at their full value, though the revenue for that period was less than fifty thousand dollars. With these facts before him, the reader will be able to understand why the prospect of Liberal rule—of which Tooele County for nearly five years furnished such a woeful example—was a source of so much dread to the majority of the people of Utah.

\* Following is the official table of the Territory's population by counties, for 1880, compared with that of 1870:



Utah in that capacity during the three preceding terms.\* The Liberal convention was held about the same time. Allen G. Campbell, a

	1880.	1870.
Beaver	3,915	2,007
Box Elder	6,780	4,855
Cache	12,620	8,229
Davis	5,350	4,459
Emery	460	†
Iron	4,020	2,277
Juab	3,510	2,034
Kane	3,090	1,513
Millard	3,740	2,753
Morgan	1,780	1,972
Piute	1,230	82
Rich	1,270	1,955
Rio Virgin	‡	450
Salt Lake	31,700	18,337
San Juan	210	†
Sanpete	11,700	6,786
Sevier	4,475	19
Summit	4,940	2,512
Tooele	4,530	2,177
Uintah	810	†
Utah	18,000	12,203
Wasatch	2,940	1,244
Washington	4,240	3,064
Weber	12,380	7,858
Totals	143,690	86,786

Increase since 1870, 56,904.

The United States Census of 1880 classified the population of Utah as follows:

Mormons	120,283
Gentiles	14,156
Apostate Mormons	6,988
Josephites	820
Miscellaneous or Doubtful	1,716
Total	143,963

\* The time for holding the Delegate election had been changed pursuant to a law of Congress enacted in 1872, supplemented by an act of the local Legislature in 1876. The election, formerly held in August, now took place in November.

† New Counties. ‡ Included in Washington and Kane Counties.

rich mine-owner of Southern Utah, was its choice for Delegate, and he it was who led the Liberal cohorts in the campaign.

As sure of the election as it was certain of an overwhelming majority of the votes to be cast, the People's party made no special effort to win; though its orators and journals, according to custom, urged the polling of as large a vote as possible. The Liberals, on the other hand, put forth every exertion of which they were capable. Their speakers spread themselves over the greater part of the Territory, calling upon their forces to rally for the contest, and inviting their opponents to "throw off the shackles of priestly rule," and be free; in other words to vote the Liberal ticket.

Not only by such means did the Liberals seek to thin the ranks of the People's party. They attacked the Woman Suffrage Act, holding it to be invalid, and strove to secure the disfranchisement of the women of Utah, most of whom, of course, were Mormons. One of the Liberal stalwarts—General Maxwell—in September filed in the Supreme Court of the Territory a petition for a writ of mandamus, to compel the registration officer of Salt Lake County—Robert T. Burton—to erase from the list of voters the names of Emmeline B. Wells and Maria M. Blythe, Mormons, and Mrs. A. G. Paddock, a non-Mormon, with all other names of women that appeared thereon. An alternative writ was granted, and the hearing set for the 29th of September. A demurrer was interposed and argued by Joseph L. Rawlins and Zera Snow for Registrar Burton, and by Sutherland and McBride for the relator. The Court gave its decision on the 1st of October, Judges Hunter and Emerson uniting in the view that the registrar could not be compelled by mandamus to erase the names of the women voters. Judge Boreman dissented from the opinion of the majority, holding that the act enfranchising the women of Utah was invalid, and that the Court ought to compel the Registrar to erase the names.

Judge Boreman's term of office expired upon the day this decision was rendered. He was succeeded by Hon. Stephen P. Twiss, who, however, did not enter upon his duties until early in January, 1881.

The election for Delegate passed off peaceably on Tuesday the 2nd of November. It was won, as usual, by the People's party. Hon. George Q. Cannon received 18,568 votes, as against 1,357, cast for his opponent, Mr. Campbell. The latter, however, in spite of the paradox, was not yet defeated, as we shall see.

There is little doubt that the extraordinary activity displayed by the Liberal party in the fall of 1880 was but part of a preconcerted plan, a general and widespread conspiracy for a tremendous assault all along the line of the Mormon defenses, secular and ecclesiastical. This conspiracy was double-rooted, having as its origin religious rancor as well as political animosity. Its field of operations was not only Utah, but various other sections of the Union, whence all efforts converged toward and found a focus at the national capital.

It has already been shown how an association styling itself the Anti-Polygamy Society, composed exclusively of non-Mormon women, sprang into existence at Salt Lake City early in November, 1878, just after the preliminary examination in the Miles case. The object of the Society was indicated by its title, and some of the methods by which it proposed to attain its ends were set forth in the address read to the members at their initial meeting. That address, directed to "Mrs. Rutherford B. Hayes, and the women of the United States," called attention to the existence and alleged increase of polygamy in Utah and to the utter failure of Congress to enact efficient or enforce existing laws for its abolition. It stigmatized polygamy as "a great crime," and declared that it had never taken such a debasing form, in any nation or among any people above the condition of barbarism, as in Utah. Here, it was reduced to "the lowest form of indecency." "That it should be practiced in the name and under the cloak of religion, that an Apostle, a polygamist, with four acknowledged wives, is permitted to sit in Congress, only adds to the enormity of the crime and makes it more revolting to our common Christian principles." The closing paragraphs ran thus:

We call upon the Christian women of the United States to join us in urging Congress to empower its courts to arrest the further progress of this evil, and to delay the

admittance of Utah into Statehood until this is accomplished. We ask you to circulate and publish our appeal in order to arouse public sentiment, which should be against an abomination that peculiarly oppresses and stigmatizes woman. It is our purpose to ask names to a petition designed for Congress, and we hope, also, that every minister of the gospel will commend it to the women of his congregation, and that all Christian associations will do what they can to obtain signatures.

With the cordial co-operation and concentrated action of the Christian women of the land, we may confidently hope that the great sin of polygamy may be abolished.

Copies of this address, and of a memorial to Congress, praying for such legislation as would render effective the Anti-polygamy Law of 1862, were circulated throughout the United States for signatures.

Whether the document thus summarized actually emanated from the minds and hearts of the Gentile women of Salt Lake City, or was prepared at the head quarters of the Liberal party, and placed by the politicians in the hands of their wives, daughters and feminine friends, with instructions to sign it and scatter it broadcast, is immaterial at the present time. One is loth to believe that such harsh and untruthful statements had any but a masculine source. That more than one polygamist had made mistakes, no Mormon would dispute—though he might point to the fact that monogamy also had its abuses—but that polygamy in Utah was “the lowest form of indecency,” or was indecent at all, as practiced by the great majority of its votaries—the peers in every respect of the most moral and virtuous of their accusers—every Mormon knew to be false; and every Gentile knew it who had been long enough in the Territory to learn the facts.

If the Liberal leaders were the framers of the religio-political instrument, their shrewd policy in keeping in the background at such a time is apparent. Having accused the Mormons of blending religion and politics, of uniting Church and State, and thus jeopardizing American institutions, the Anti-Mormons, however guilty of such practices themselves, would naturally be averse to advertising the fact. Hence the formation of the Anti-Polygamy Society—which was no more nor less than an adjunct to the Liberal party—and the issuance by its members of the paper in question.



*Newton Buttle*



Only two hundred persons were present at the inception of the Society, but the movement was a formidable one. A paper was established known as "The Anti-Polygamy Standard," edited and published at Salt Lake City, and lecturers were sent through the Eastern States, to depict in lurid colors the alleged evils of plural marriage, and enlist the efforts of the women of the country against it. Two of these lecturers were Mrs. Jennie Froiseth and Mrs. A. G. Paddock, the latter the author of an anti-polygamy romance entitled "In the Toils." The result of their labors and those of their associates was the formation in various parts of the Union of anti-polygamy societies, modeled after and drawing inspiration from the parent organization at Salt Lake City. The institution was called "The National Anti-Polygamy Society."

While the prompt and vigorous action of the Mormon women, who, indignant at being misrepresented by their Gentile sisters, assembled in force a few days after the inception of the anti-polygamy movement, and, branding as false the aspersions cast upon them, their husbands, and the Patriarchal Order of Marriage, protested against the Congressional legislation prayed for by their opponents,—while this may have had some effect in checkmating the initial moves made by the Anti-Polygamy Society, it is undeniable that the organization succeeded eventually in accomplishing its purposes.

It is probable that among the results of its operations may be included the issuance of the celebrated Evarts circular, of August, 1879, in which the Secretary of State instructed the representatives of the United States in various European nations, to ask of the governments at whose courts or in whose shipping ports they discharged their functions to assist in the suppression of Mormon emigration to this country.\* Nor is it at all unlikely that the murder of the Mor-

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\* The pretext for the proposed embargo was that the Mormons were devotees of a faith which tolerated polygamy, which had been made by the laws of the United States a crime. It was assumed that all Mormons believed in and would practice polygamy, and that those who designed emigrating to Utah were therefore violators in prospect of the

mon missionary, Joseph Standing, in the backwoods of Georgia, in July of the same year, was indirectly due to the unwarrantable agitation which had just begun. It continued to increase until its authors and promoters, aided by politicians and priests, clergy and laity throughout the land, finally procured the enactment of the Edmunds Law and the expulsion of Utah's Delegate from the halls of Congress.

The original pronunciamento of the Anti-Polygamy Society was addressed, it will be remembered, to the wife of the President of the United States. Was it that which inspired the President, in December, 1879, to include in his message to Congress a reference to polygamy in Utah, and a recommendation "that more comprehensive and searching methods for preventing as well as punishing this crime be provided"?

Nine months later President Hayes visited Utah. Three months after this event, he addressed, in December, 1880, his final message to Congress. It contained references to polygamy similar to those in the former message. To what extent the anti-polygamy portion of the document of 1879 was intended to subserve the interests of the Republican party—which, in the year following, was to grapple with its great foe, Democracy, in the regular quadrennial struggle for the Presidency—the reader must determine. That the address sent to Mrs. Hayes—supplemented by a flood of petitions, which, inspired by the address, now began pouring into Congress from all parts of the country—strongly impressed the mind of the Chief Magistrate, is only a reasonable conclusion.

Congress was now duly instructed from the Executive Mansion in relation to Mormon affairs. What President Hayes said upon the subject in 1879 and 1880, President Garfield virtually repeated in his inaugural address, in March, 1881, as did President Arthur in his

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Federal statutes. The idea of punishing men and women for crimes that they were suspected of intending to commit, was so ridiculous, not only to the American mind, but to the sentiments of autocratic Europe, that Mr. Evarts became the laughing-stock of statesmen and diplomats the world over.



first annual message to Congress in December of the same year. Without waiting for all these expressions, however, the Utah Anti-Mormons took steps to create a contest that should cause a general agitation of the question throughout the country.

It was asserted that this was all that was aimed at by the Liberals, when, in the fall of 1880, they nominated Allen G. Campbell for Delegate to Congress; and that it was not with the hope of seating him in the House of Representatives that they made him their standard-bearer in that memorable campaign. That they did not expect to seat him by a majority of the votes cast at the election is evident, and that they did not hope for success in the effort to foist him into place by means of the contest subsequently begun is quite possible. It was the enactment of legislation that would turn the government of the Territory over to them *in toto*, and at the same time stamp out Mormonism, more than the mere seating of a Gentile Delegate in Congress, that was their purpose at that time. There is no doubt, however, that to seat their candidate was with them an anxious secondary desire. Hence their choice of Mr. Campbell, who, though not an intellectual giant, was a solid business man, representing the mining interests of the Territory, and could be depended upon, not only to supply "sinews of war" for the campaign, but to unify the Gentile vote. Hence, also, their desperate though ineffectual struggle to obtain for him the seat in question.\*

At the meeting where he was nominated, and which was held in the Liberal Institute, Salt Lake City, speeches were made by Messrs. John R. McBride, R. N. Baskin, Albert Hagan, General Maxwell, Governor Murray and other Liberal leaders, and the gauntlet of defiance thrown down in the name of "the American Republic" to "the Mormon Polygamic Theocracy." Such a phrasing indicated that the challengers did not deem it a mere political fight that was to be waged, but the beginning of a crusade by the Federal Govern-

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\* Mr. Campbell was at this time a large owner in the celebrated Horn Silver mine at Frisco, Beaver County. He was generous in the use of his wealth, employing a portion of it to educate the children of the poor.

ment against the Mormon Church. The Fort Douglas military band had been lent to add zest to the occasion.

Amid loud acclamations, and music, "The Campbells are coming," Allen G. Campbell was made the candidate of his party. He was in New York City at the time, but immediately set out upon his return to Utah, telegraphing his acceptance of the nomination from Chicago. The campaign and election followed, resulting in his overwhelming defeat at the polls.

On the 14th of December, the Secretary of the Territory—Arthur L. Thomas—opened in the presence of Governor Murray and others the returns of the November election. These showed that George Q. Cannon had received 18,568 votes and Allen G. Campbell 1,357 votes, as Delegate for Utah to the Forty-seventh Congress. It was now the duty of the Governor to issue to Mr. Cannon a certificate of his election pursuant to Section 1862 of the Revised Statutes of the United States, to wit:

"Every Territory shall have the right to send a Delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the Legislative Assembly thereof. The person having the greatest number of votes shall be declared by the Governor duly elected, and a certificate shall be given accordingly."

To have issued such a certificate to George Q. Cannon, "the person having the greatest number of votes," would have been to frustrate the purpose of the Liberal party. Governor Murray preferred to thwart the will of the people, as expressed at the polls. To refuse the certificate to Mr. Cannon, and give it to Mr. Campbell, had doubtless been determined on in Anti-Mormon councils before a single vote had been cast.

Just before the opening and counting of the returns—which it was well known would show an overwhelming majority for the People's candidate—a document signed by Allen G. Campbell and dated December 12, was filed with the Secretary. It was a protest against the issuance of an election certificate to George Q. Cannon and a demand that such a certificate be given to his opponent. The grounds cited were substantially as follows:



W. G. Nowers



(1) That as canvassing officers the Governor and Secretary had power to "go behind the returns," and ascertain from extrinsic evidence the number of votes legally cast for each candidate.

(2) That there was no evidence tending to disprove Mr. Campbell's qualifications for the office of Delegate to Congress.

(3) That there was no evidence tending to disprove the qualifications of the 1357 electors who voted for him.

(4) That George Q. Cannon was an unnaturalized alien.

(5) That, being such, he was not eligible to the office of Delegate to Congress, and his ineligibility, resulting from alienage, was aggravated by polygamy, which was incompatible with citizenship and inconsistent with an honest oath of allegiance to the Constitution of the United States.

(6) That all of the 18,568 votes cast for Mr. Cannon at the late election were therefore void and ought to be excluded from the canvass.

(7) That as a consequence the certificate of election should be delivered to Mr. Campbell instead of to Mr. Cannon.

(8) That the females in the Territory who claimed the right to vote outnumbered all the votes polled at the election.

(9) That it "must be taken for granted" that all votes cast by females were cast for Mr. Cannon.

(10) That the Territorial legislation extending the right of suffrage to females was void.

(11) That it was therefore impossible to determine, without proof, that the 18,568 votes cast for Mr. Cannon included more legal votes than the 1,357 votes cast for his opponent.

(12) That the votes of the females had vitiated the election.

A copy of this paper was sent to Delegate Cannon at Washington, and he, under date of December 30, forwarded his reply, answering each allegation in its order.

He met the proposition as to the powers claimed for the Governor and Secretary by showing that the law did not give them authority, as canvassing officers, to "go behind the returns." Their duties were purely ministerial. They had no judicial powers connected with the election if the papers before them purporting to be the returns thereof were made in substantial conformity to law. It was the Governor's plain duty to give to the person shown by the returns to have received the highest number of votes the certificate of election.

To the second and third propositions Delegate Cannon replied

that it was quite immaterial at that time to inquire whether Mr. Campbell was or was not eligible to the office which he sought, or whether or not there was any evidence tending to disprove the qualifications of the electors who voted for him, since the House of Representatives was the only tribunal empowered to judge of the qualifications of its members. All such questions must therefore come before that body for adjudication, and could not be decided by the Governor and Secretary.

Mr. Cannon argued in the same vein regarding the allegations that he was an alien and a polygamist. It was not for the Governor of Utah but for the House of Representatives of the United States to consider and pass upon such charges when urged as disqualifications of its members. That he was a citizen of the United States, however, he could prove, and had proved, to the satisfaction of the House, whose Committee on Elections of the Forty-fourth Congress had unanimously overruled this precise objection to Delegate Cannon's eligibility. This was when Mr. R. N. Baskin contested the seat. As to polygamy, the Committee on Elections of the Forty-third Congress, when Mr. George R. Maxwell was the contestant, had unanimously held, and the House had concurred in the view, that the only qualifications or disqualifications of Delegates were those prescribed by the Constitution for Representatives, and that polygamy was not a disqualification for a seat in the House of Representatives of the United States.

Propositions six and seven were shown to involve a doctrine which had more than once been repudiated by both branches of Congress, to wit: that the ineligibility of the candidate having the highest number of votes gave the election to an eligible candidate having a lower number of votes. This same question had been raised during the Maxwell-Cannon contest, when the Committee and the House, without division, condemned the doctrine now asserted by Mr. Campbell.

The eighth and ninth grounds were shown to be mere presumptions, which, even if facts, were not entitled to any weight. Regard-

ing point number nine Mr. Cannon said: "The House will not presume what he asserts on this point to be true, but will compel him to prove it."

As to the tenth allegation—that the Territorial woman suffrage act was invalid, for the reason that "it attempts to confer the privilege by a special act on different and easier terms of qualification than those required by existing general laws applicable to the other sex, thus violating the rule of uniformity"—Mr. Cannon replied that even if this were the case, it could have no bearing upon the action of the canvassers, but only upon the action of the House of Representatives in a contest or under a protest before that tribunal.

In answer to the eleventh proposition, Mr. Cannon said: "The absurdity of this assertion is not even mitigated by a concession that the same presumption arises as to votes cast for him. \* \* \* The presumption is that all votes shown by returns, legal in form, to have been cast for him or for me, were so cast, and were lawfully cast. This presumption is not conclusive on the House in a contest duly prosecuted. It may be overcome by extrinsic proof. But it is conclusive on the canvassing officers \* \* \* if the returns are regular and legal."

The final ground of Mr. Campbell's protest and demand—a plea giving color to the claim that the Liberals did not expect to seat their candidate, and at the same time rendering ridiculous his request for a certificate—was that the female vote had vitiated the election. It was answered thus:

This is a most remarkable view of the law to be entertained by an aspirant to a seat in Congress. \* \* \* If the House in a contested case shall find that of my 18,568 votes 17,212 were illegal, whether cast by women or by men, and that of Mr. Campbell's 1,357 none were illegal, the election will not be rendered void, but the seat will be awarded to Mr. Campbell. But if the House shall not find that so many illegal votes were cast for me, it will confirm my title to the seat, whatever assertions Mr. Campbell may see fit to make in impeachment of that title. Of the question presented in this branch of Mr. Campbell's protest, the Governor and Secretary, as canvassers, obviously have no shadow of jurisdiction.

Said Delegate Cannon in conclusion :

Having answered all the propositions upon which Mr. Campbell bases his protest against an award of the certificate of election to me, and his demand of an award of the certificate of election to himself, I respectfully submit that a returned majority of 17,211 votes in a total vote of 19,925, gives me a title to the credentials which cannot be overridden by the Governor under any of the pretexts suggested by Mr. Campbell, without the grossest violation of law and of official duty.

All these points made by the Mormon Delegate were regarded as so many cobwebs by the Anti-Mormon Governor of Utah—to be brushed or blown aside. His course had been marked out in the “Star Chamber” councils of “The Ring,” and no argument, however conclusive, would avail to alter his design. Both sides having been presented, not only in a documentary way, but by oral arguments, Judge John R. McBride appearing for the protestor and Hon. William H. Hooper and John T. Caine, Esq., for the absent Delegate, Governor Murray awarded the certificate of election to Allen G. Campbell. His position was that George Q. Cannon was an unnaturalized alien, and that he would not be justified in giving the certificate to one who was not a citizen of the United States.

A word here in relation to this alleged lack of citizenship. The proposition rested upon two grounds, both mere technicalities. The first was that no record of Mr. Cannon’s admission as a citizen was to be found in the minute book of the First District Court, wherein he claimed to have been naturalized on the 7th of December, 1854; the second was that he was absent from the Territory in the Sandwich Islands during four years almost immediately preceding his naturalization, and therefore had not complied with the law requiring five years’ residence in the United States and one year’s residence in the Territory. It was also argued, by Mr. Campbell in his protest, and by Governor Murray in his decision awarding the certificate, that Mr. Cannon, being a polygamist, could not now be naturalized, since his marital relations were incompatible with an honest oath of allegiance to the Constitution.

The appended certificate had been filed at the hearing before Governor Murray :





*Nils-M. Petersen*



UNITED STATES OF AMERICA, }  
 TERRITORY OF UTAH, } ss.  
 COUNTY OF SALT LAKE. }

I, O. J. Averill, Clerk of the District Court for the Third Judicial District, sitting in and for the County and Territory aforesaid, do hereby certify that I have made a diligent search of all the records of said Third Judicial District Court, as well as of all records of the First Judicial District Court of said Territory in my office and in my custody, from the organization of said Court, Oct. 6, 1851, up to the present time, and that I am unable to find any record, in any of said records, of the admission of George Q. Cannon to become a citizen of the United States of America, or any record or order of said Court authorizing the Clerk of said Third District Court to issue a certificate of citizenship to him, said George Q. Cannon.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this the 6th day of January, A. D. 1881.

(Seal.)

O. J. AVERILL, Clerk.

By H. G. McMILLAN, Deputy Clerk.

This certificate was accompanied by another, containing an abstract of the entries made in the journal and minute book of the First District Court on the 7th of December, 1854, the day of Mr. Cannon's naturalization, in which no mention was made of such a transaction. It was contended by Judge McBride that the absence of any record of Mr. Cannon's naturalization in the regular journal and minute book of the Court, duly signed and authenticated by the Judge thereof, was fatal to his claim of citizenship.

The case for Mr. Cannon may be stated thus: George Q. Cannon, a subject of Queen Victoria, came to reside in the United States with his parents in the year 1842. As this was before he was eighteen years of age, he was exempt from a certain provision of the law governing naturalizations, to the effect that aliens above the age of eighteen desiring to become citizens of this country must make a declaration of their intention three years previously. Having resided a few years in Illinois, and emigrating to Salt Lake Valley in 1847, Mr. Cannon, two years later, went upon a mission to California and thence upon a mission to the Sandwich Islands, officiating as an Elder of the Mormon Church. On December 7th, 1854, having returned to Utah, he went with two witnesses

before the First District Court—now the Third District Court—at Salt Lake City, and was duly admitted a citizen of the United States, as shown by the following certificate:

UNITED STATES OF AMERICA, }  
 TERRITORY OF UTAH, } ss.  
 GREAT SALT LAKE COUNTY. }

*United States First District Court for the Territory of Utah:*

Be it remembered that on the seventh day of December, A. D. 1854, George Q. Cannon, a subject of Queen Victoria, made application and satisfied the Court that he came to reside in the United States before he was eighteen years of age; and thereupon the said George Q. Cannon appeared in open Court, and was sworn in due form of law, and on his oath did say, that for three years last past it had been his *bona fide* intention to become a citizen of the United States, and to renounce and abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever; and thereupon the Court, being satisfied by the oaths of Joseph Cain and Elias Smith, two citizens of the United States, that the said George Q. Cannon, for one year last past, has resided in this Territory, and for four years previous thereto he resided in the United States—that during that time he has behaved as a man of good moral character—that he is attached to the principles of the Constitution of the United States, and well disposed to the good order of the inhabitants thereof, admitted him to be a citizen of the same. And thereupon the said George Q. Cannon was in due form of law sworn to support the Constitution of the United States, and absolutely and entirely abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever, and particularly to Victoria, Queen of Great Britain and Ireland, whose subject he heretofore has been.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court this seventh day of December, eighteen hundred and fifty-four, and of the Independence of the United States the seventy-ninth.

W. I. APPLEBY, Clerk.\*

A copy of this document was placed before Governor Murray prior to the awarding of the election certificate, and to it was appended the following attestation:

TERRITORY OF UTAH, }  
 SALT LAKE COUNTY. } ss.

I, Ezra T. Sprague, Clerk of the Supreme Court of said Territory of Utah, do hereby certify that the annexed and foregoing is a full, true and correct copy of an instrument

\* The back of this certificate was endorsed thus:

“George Q. Cannon’s certificate of citizenship, December 7, 1854.

“Recorded in Record A of Naturalizations, folio 585.

W. I. APPLEBY,  
 Clerk.”

contained in a certain book received by me from my predecessor in said office of Clerk, and which remains deposited in my office.

In testimony whereof, I have hereunto set my hand and seal of said Court, this 7th day of January, A. D. 1881.

E. T. SPRAGUE, Clerk.

It seems that in the days of Mr. Appleby, who was simultaneously Clerk of the First District Court and Clerk of the Supreme Court of the Territory, it was customary to keep the record of naturalizations, not in the regular journal and minute book of the District Court, but in a special book provided for that purpose. This was due to an order made by Judge Leonidas Shaver, dated January 18, 1854, nearly a year before George Q. Cannon became a citizen. The book procured in pursuance of this order, and the "certain book" referred to by Clerk Sprague, were evidently one and the same. So much for the first ground of the claim that George Q. Cannon, in November, 1880, was an unnaturalized alien.

The second ground consisted of the allegation that Mr. Cannon, at the time of making oath that he had resided five years in the United States, had spent most of that time in the Sandwich Islands. This was met by the argument that a man's residence is where his home is. In 1849, when George Q. Cannon went to California and thence to the Sandwich Islands, his home was in Salt Lake Valley, and had been for two years previously. His home continued to be in the same place all during his mission abroad, and to that home he returned as soon as his mission was ended. It was therefore claimed that he had been a resident of the United States—though a sojourner abroad during a portion of the time—for five years preceding the date of his naturalization. This view of the case had been taken by a Congressional committee in one of the former contests in which Mr. Cannon had figured, and the decision was in his favor.

As to the charge of polygamy, while it is true that Mr. Cannon had more than one wife, there was no evidence to show that he had married since the enactment of the Anti-Polygamy Law of 1862. He

was therefore not a violator of that statute, which was not retro-active, and contained no allusion to cohabitation, or the living with one's wives after marriage.

The foregoing statement of Mr. Cannon's case is a little more complete than the presentment before Governor Murray; but enough facts and arguments were laid before that official—notwithstanding his jurisdiction of the whole matter was denied,—to have induced him to pause in his reckless course had it not been a predetermined one. Said he in giving his decision :

The record of the court is the only means of ascertaining its judgments and orders. The clerk's certificate of the judgments and orders of a competent court, and not his individual statements without seal,\* is the only guide in all cases, and therefore must be in this case. The records of the court fail to make Mr. Cannon a citizen, and he, as I, must stand by the record. Mr. Cannon, under any other circumstances, might, perhaps, acquire citizenship by the time his term of office commences, but it is charged in Mr. Campbell's protest, and not denied in Mr. Cannon's answer, that he is living in polygamy, a violation of the Act of Congress of 1862, making it a crime.† This being the case, he is not "well disposed towards the government of the United States." Therefore he can not, in good faith, take the oath of naturalization, and the courts of the Territory uniformly enforce this rule. The House of Representatives, *Congressional Record*, June 16, 1874, page 5046, affirms the same principle in House Bill 3679, providing that delegates in Congress should be twenty-five years of age, seven years a citizen and an inhabitant of such Territory; "and no such person who is guilty of bigamy or polygamy‡ shall be eligible to a seat as such delegate."

It having been shown that Mr. Cannon is not a citizen, and that he is incapable of becoming a citizen, I can not, under the law, certify that he is "duly elected," and Mr. Campbell having received the greatest number of votes cast for any citizen, was therefore duly elected and must receive the certificate accordingly.

I am aware that my action on this question is not final. The House is the judge of the qualifications and the election of its members, but in the discharge of my sworn duty under the law to give the certificate to the person duly elected, I cannot do otherwise than give it to Allen G. Campbell.

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\* The certificate of citizenship held by Mr. Cannon bore the seal of the Court which issued it, as is evident from the attestation of Clerk Appleby, q. v.

† It was not "living in polygamy," as already explained, that the law of 1862 made a crime. It was the marrying in polygamy that constituted the offense against that statute.

‡ That is, guilty, after the enactment of the law against it, of marrying a plural wife.



*Amos D. Holdaway*





The certificate given to Mr. Campbell was worded as follows :

UNITED STATES OF AMERICA, }  
 TERRITORY OF UTAH, } ss.  
 EXECUTIVE OFFICE.

I, Eli H. Murray, Governor of the Territory of Utah, do declare and certify that at a regular election for Delegate to the Forty-seventh Congress, held in said Territory on the first Tuesday after the first Monday in November, A. D. 1880, returns whereof were opened in my presence by the Secretary of the Territory, Allen G. Campbell was the person, being a citizen of the United States, having the greatest number of votes, and was therefore duly elected as Delegate from said Territory to said Congress, and I do give this certificate accordingly.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the Territory to be affixed. Done at Salt Lake City, this eighth day of January, A. D. 1881.

(Seal.)

ELI H. MURRAY,  
 Governor.

By the Governor:

ARTHUR L. THOMAS,  
 Secretary of Utah Territory.\*

On the same day that the certificate was issued, Governor Murray left Utah for the East, accompanied by his family. He purposed being absent for several months, visiting among other places his old home in Louisville, Kentucky, also New York and Washington.

The press dispatcher at Salt Lake City gravely informed the country that "the order came to Governor Murray from a higher power than ever Washington was, 'issue certificates to none but Americans in Utah,' and he could not disobey." In reference to this allusion—which some interpreted literally—the Washington correspondent of the *Chicago Journal*, after an interview with the Utah Delegate, said, in a telegram to his paper :

In view of the statement contained in press dispatches from Salt Lake, that somebody higher in authority was behind Murray in this matter, Cannon says he felt it his duty to go and see the President. The latter said he knew nothing about Murray's action, and that all he had said about the Mormon question was in a public way. Without condemning the Governor's action, the President said that Murray had undoubtedly

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\* This certificate was not in due form. The words, "being a citizen of the United States," were not in the law, but were an interpolation of the Governor's. It was his duty to give the certificate to "the person having the greatest number of votes." The question of citizenship could only properly arise in a contest for the Delegateship before the House of Representatives at Washington.

exceeded his authority. Cannon is confident that the House will not sustain Murray in his course.

The subjoined press comments on the Governor's action show how the matter was viewed in various parts of the country:

ST. LOUIS GLOBE-DEMOCRAT.

Governor Murray, of Utah, is on his way east to receive congratulations for his conduct in giving a certificate of election to a man who had no title to it. Congress will, we trust, treat the matter as it deserves, and will not admit Mr. Murray's man. This is a Government of law, and the law plainly entitles Mr. Cannon to the seat. It is for the House to say, as the sole judge of the election and qualification of its own members, whether Mr. Cannon, being a polygamist, is qualified to sit as a member. Mr. Murray was guilty of gross and impertinent usurpation in the premises.

ST. LOUIS REPUBLICAN.

Governor Murray has played what is called "a sharp trick" upon the Mormons, which, while it reflects credit upon his shrewdness, is not particularly complimentary to his sense. Whether Cannon is or is not an unnaturalized foreign-born citizen, it is certain that he has more than once been admitted to Congress as Delegate from Utah, and that he has been recently re-elected by an overwhelming majority. To refuse him his certificate on such a plea is a piece of injustice which would never have been thought of were he not a Mormon; and the cry of the Gentile organ at Salt Lake, "put none but Americans on guard," is a fitting supplement to the action of Governor Murray. We recognize the importance, the necessity, of getting rid of polygamy as soon as possible, and are prepared to indorse all honorable means for the accomplishment of that desirable result. But this is not honorable—quite the reverse; and its only effect will be to complicate and aggravate a problem already sufficiently difficult and dangerous.

OMAHA HERALD.

A more arbitrary and unprincipled proceeding has never before occurred in the country. It is alike destitute of precedent and example, and the pretended excuse offered by the Governor only renders more glaring the enormity. In the first place, neither the Constitution nor the laws make him the judge of the qualifications of a member of Congress. Whether Mr. Cannon was a naturalized citizen or not was none of his business. He was elected by the people of Utah, and the duty of the Governor was to render the will of the electors effective in the only proper way, which was to certify the fact to Congress. \* \* \* There is nothing in the organic act of Utah which can fairly be interpreted as conferring upon the chief magistrate of the Territory any but executive functions. \* \* \* Conceding that Mr. Cannon is not a naturalized citizen (which we do not) he was nevertheless elected a delegate to Congress and that body alone can render effective his disqualification, if it exists. His opponent was certainly not elected, and in certifying that he was, Governor Murray chooses between his fealty to his party and his sworn obligations as an officer of the law. \* \* \*

The whole thing is a subterfuge which, in brazen effrontery, outstrips the usual devices of the characterless politician.

## OMAHA BEE.

The sober-minded and unpartisan people of the country will not support Governor Murray, of Utah, in his refusal of a certificate to Delegate Cannon on grounds purely technical. \* \* \* The *Bee* opposed the Garcelon steal in Maine, which was of the same character as Murray's shrewd trick. It condemns equally this latest dodge to defeat the popular will and to substitute political chicanery for honesty and fair dealing even towards opponents.

## SACRAMENTO RECORD-UNION.

Governor Murray appears to be singularly obtuse. \* \* \* The question of Cannon's citizenship is one with which he had nothing whatever to do, and which he possessed no authority either to consider or to adjudicate. The law told him plainly that he was to issue a certificate to the candidate having the largest number of votes. It was none of his affair who that candidate might be. It was nothing to him whether that candidate was or was not a citizen. \* \* \* All he had to do was to issue his certificate and he has issued it in defiance of the law, to the man who was defeated, instead of to the man who was elected. The more nonsense he talks about the case and the more foolishly he endeavors to justify a course which is indefensible, the plainer does it appear that he ought to be removed from an office his unfitness for which is so glaringly conspicuous.

## CHICAGO TIMES.

What the people of this country wish is the extinction of polygamy by legitimate process, and not by extra constitutional acts, or by anything which is in the nature of persecution. If the attempt be made in any such shape, it will only have the effect to strengthen the very thing which it is laboring to weaken. This outcome is seen already in the case of Cannon and Campbell. So far as a choice of men is concerned, there is no doubt the people of the country would, by a large majority, prefer the selection of the latter, providing it could be done in a legitimate way; but as the matter now stands, the action taken by the Utah Governor has reversed popular sentiment, and it is the fact that the voice of the press and the people is now decidedly in favor of the return of Cannon. This is for the reason that they recognize that the manner in which Cannon has been treated is simply an inexcusable outrage.

## BOSTON HERALD.

The higher law has a paramount authority on some questions and in rare emergencies, but it can hardly be evoked to warrant a ministerial officer in exercising functions that do not belong to him. \* \* \* If Delegate Cannon was legally elected, he is entitled to his certificate. If he is disqualified by reason of felony or any other cause, Congress alone has the power to deny him a seat.

NEW YORK GRAPHIC.

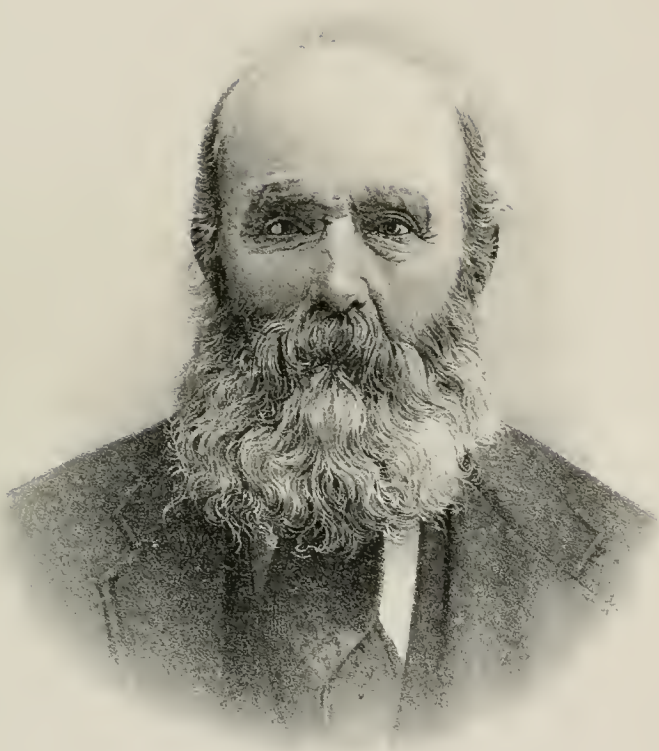
A refusal of a certificate to Cannon would not warrant the granting of a certificate to Campbell. Campbell did not receive the greatest number of votes, and hence the Governor could not declare him duly elected and give him the certificate accordingly as directed by the statute.

NEW YORK TRIBUNE.

The Woman's National Anti-Polygamy Society, who have been justifying Governor Murray's action in issuing a certificate of election to Campbell, are not to be blamed perhaps for knowing as little of the law as he seems to know or to be willing to observe. But it is a pity that the opponents of polygamy should give their adversaries any advantage by taking a clearly untenable position which must be abandoned. The House will be compelled, as a matter of course, to refuse Campbell his seat, following the decision of the Senate in the case of Mr. Abbot, of North Carolina, and the decision of the courts in many States, and the opponents of polygamy will have the mortification of a defeat which need never have been inflicted.

Many other leading journals voiced similar views. Among the few that palliated the Governor's course was the *Louisville Courier-Journal*, edited by Henry Watterson. The reason for the espousal by Watterson, a Democrat, of the cause of Murray, a Republican, must be found in something else than the fact that both men were Kentuckians, and, until the latter came West, residents of the same city. One is loth to accept as the explanation of the editor's attitude, that given in a telegram from Washington to the *Chicago Inter-Ocean*, to the effect that Colonel Watterson was interested with Governor Murray and Mr. Campbell in certain mines in Montana, and that he allowed this to influence him. The *Louisville Post*, in denouncing Murray's conduct and Watterson's defense of it, declared that the editors of the *Courier-Journal* must be either "corrupt or crazy."

It appears that Murray, before coming to Utah, had been United States Marshal of Kentucky, and during that time had not conducted the affairs of his office in such a way as to escape suspicion of fraud. This scandal now came to the surface, and floated, or rather flew from place to place, until the whole country rang and resounded with it. The Mormons were told that they need not be surprised, if a man who could not keep his accounts straight in Kentucky, should be



*John Emmiss*



unable to know the difference between 18,000 and 1,300 in Utah. The agitation resulted in the Governor's being summoned to Washington to answer as to his alleged irregularities. Either he was able to give a satisfactory account of his former stewardship—the Kentucky Marshalship—or it was deemed politic to let the matter drop, for nothing more came of it.

Meantime the diplomatic and legal battle for the Utah Delegateship began. On the 20th of January, 1881, Delegate Cannon, sitting in the Forty-sixth Congress, wrote to Mr. Allen G. Campbell that he would contest his right to a seat in the Forty-seventh Congress as Delegate from Utah; also his right to be sworn or enrolled or to hold a certificate of election as such Delegate. The grounds of contest were that he—Mr. Cannon—had been lawfully elected and was entitled to the certificate, and that the action of Governor Murray in withholding it from him and giving it to his opponent was illegal and fraudulent.

It was necessary that the notice of contest, in order to be effectual, should be served personally upon Mr. Campbell within thirty days after the issuance of the certificate of election. For failing to observe this requirement, Mr. McGroarty, in his attempt to unseat Delegate Hooper many years before, had lost what little chance he had of contesting for the coveted prize of a seat in Congress. Delegate Cannon acted promptly. Learning that Mr. Campbell could not be found in Washington, though he had recently been there and at other places in the East, in company with Governor Murray, he sent the necessary papers to Utah with instructions to have them served without delay. Mr. Campbell was still absent from the Territory, but hearing that he was journeying homeward, Mr. S. H. Hill, acting for Mr. Cannon, met and served the papers on the Liberal candidate, at Green River, on the 4th of February.

The latter, in the absence of his attorney, refused to sign an acknowledgment of service at that time, but on February 26th wrote to Delegate Cannon from Salt Lake City, acknowledging the receipt of the notice. He denied that Mr. Cannon was elected and entitled to

the certificate, asserted his own right to it, and defended the action of the Governor in awarding it to him.

On the 8th of February proceedings to compel Acting-Governor Thomas to give a certificate of election to Mr. Cannon had been instituted in the District Court at Salt Lake City. The agent for the absent Delegate was John T. Caine, Esq., who was destined to succeed Mr. Cannon in Congress. Judge Hunter granted an alternative writ of mandamus and named February 14th as the time for the hearing thereon. Judge Sutherland, one of the attorneys for the Acting-Governor, asked for an extension until the 14th of March. Arthur Brown, of counsel on the other side, showed that this would be too late, as his client needed the certificate in Washington prior to the 4th of March, at noon of which day the Forty-sixth Congress expired, and the Forty-seventh Congress began. The Court denied the request for so long an extension, but reset the time of hearing at February 21st. Judge Twiss heard the case in chambers on that day, and three days later delivered an opinion to the effect that the Court could not compel the Acting-Governor to issue the certificate.

Mr. Thomas, however, who, as Acting-Governor, had refused to issue the certificate, and whose refusal the Court had sustained, as Secretary of the Territory now gave a certified statement, duly signed and sealed, to the effect that at the election in the previous November George Q. Cannon received 18,568 votes and Allen G. Campbell 1,357 votes for Delegate to Congress from Utah. This statement was forwarded to Mr. Cannon and by him placed beside the certificate given to his opponent and which had been filed in the office of the Clerk of the House of Representatives. The Governor had filed with the Clerk a duly attested copy of his decision awarding the certificate. In that decision it was stated that George Q. Cannon, at the election in question, received 18,568 votes and Allen G. Campbell 1,357 votes as Delegate to Congress.

Ignoring the Campbell certificate, which, as already shown, was not in due form, the clerk, Mr. George M. Adams, of Kentucky, in making up the roll of the House for the Forty-seventh Congress,



took as the basis of his action in Utah's case, the certified statements of the Governor and Secretary of the Territory, showing that George Q. Cannon was "the person having the greatest number of votes." He therefore placed George Q. Cannon's name upon the roll, and the latter began drawing the compensation due him as Delegate from Utah.

Fierce was the wrath of the Liberal leaders when they learned what had taken place. Anathemas without number were hurled at the head of the Clerk of the House of Representatives. Not only was this the case in Utah, but in other parts of the country, the Republican papers being particularly severe in their strictures upon Mr. Adams, who was styled "a Mormon sympathizer." The Democratic press, as a rule, defended him. Few believed that any wrong had been done to Mr. Campbell, or anything more than a simple act of justice to Mr. Cannon. It was the right of the clerk to place the name upon the roll that was questioned. As for Mr. Adams, he maintained that he had only done his duty under the law, and boldly declared that if George Q. Cannon had been an unnaturalized Englishman, and he had known him for such, he would have done the same. He cited as his authority the following sections of the Revised Statutes of the United States:

SECTION 31.—Before the first meeting of each Congress the clerk of the next preceding House of Representatives shall make a roll of the Representatives elect and place thereon the names of those persons and of such persons only, whose credentials show that they were regularly elected in accordance with the laws of the States respectively, or the laws of the United States.

SECTION 38.—Representatives and Delegates elect to Congress, whose credentials in the form of law have been duly filed with the clerk of the House of Representatives, in accordance with section thirty-one, may receive their compensation monthly, from the beginning of their term until the beginning of the first session of each Congress, upon a certificate in the form now in use to be signed by the clerk of the House, which certificate shall have the like force and effect as is given to the speaker; but in case the clerk of the House of Representatives shall be notified that the election of any such holder of a certificate of election will be contested, his name shall not be placed upon the roll of members-elect so as to entitle him to be paid, until he shall have been sworn in as a member, or until such contest shall be determined.

The Liberal leaders took immediate steps to regain the lost ground which had slipped so suddenly and unexpectedly from under the feet of their candidate. Congress was not in session, and would not be until December. It was now June. For speedy relief they must apply elsewhere. The Federal Courts of Utah were open. They would try what could be done there. Accordingly they planted a suit against Delegate Cannon, the ground of action being his alleged lack of citizenship.

The first papers in the case—"The United States ex rel. Allen G. Campbell, plaintiff, *vs.* George Q. Cannon, defendant"—were filed in the District Court at Salt Lake City on the 8th of June. The Court was asked to adjudge and decree that the defendant was not a citizen of the United States, had not hitherto been and never was naturalized as such according to law; that the certificate of "pretended naturalization" held by him be adjudged fraudulent and void, and that he be enjoined from demanding, accepting or receiving from the treasury of the United States the salary and compensation pertaining to the office of Delegate to the Forty-seventh Congress from the Territory of Utah.

The injunction asked for was granted by Judge Hunter, and on the 22nd of June the defendant's answer was filed. A motion to dissolve the injunction was also made by the defense, and after a hearing thereon the matter was taken under advisement. On the 18th of July Judge Hunter made a verbal order granting the motion to dissolve, and the case then went over till September. On the 24th and 27th of that month, arguments on the defendant's demurrer to the complaint were made by Arthur Brown for the defendant and by Sutherland and McBride for the plaintiff. The main points of the demurrer—filed on the 16th of June—were the alleged misjoinder of parties plaintiff—the United States and Allen G. Campbell—and the allegation that the complaint did not state facts sufficient to constitute a cause of action. Finally, on the 31st of October, Judge Hunter rendered the following decision:

IN THE DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT OF UTAH TERRITORY.

THE UNITED STATES ON THE RELATION OF ALLEN }  
 G. CAMPBELL, PLAINTIFF, VS. GEORGE Q. }  
 CANNON, DEFENDANT. COMPLAINT TO ANNUL }  
 A CERTIFICATE HELD BY DEFENDANT AND USED }  
 BY HIM AS A CERTIFICATE OF NATURALIZATION. }

The demurrer of the defendant to the complaint filed in this action having been heretofore argued by counsel for the respective parties, and taken under advisement; and the court having duly considered the same; and it appearing to the court that the Attorney-General of the United States should file complaint in behalf of the Government in such cases; and that from the facts stated in the complaint, which are admitted by defendant's demurrer, that there is no record of defendant's naturalization, and that no proceeding for that purpose ever took place in court, and that the certificate held by defendant as certificate of naturalization was obtained by fraud and has been fraudulently used, and is void on its face in not professing to be the copy of a record and not certifying a regular naturalization, and therefore that there is no sufficient cause shown for annulling it, it is ordered that the said demurrer be and the same is hereby sustained, and that the complaint be and is hereby dismissed.

(SEAL.)

JOHN A. HUNTER, Judge.

H. G. McMILLAN, Deputy Clerk.

Immediately upon the delivery of this decision the Associated Press agent at Salt Lake City telegraphed abroad that Chief Justice Hunter had decided George Q. Cannon's certificate of citizenship to be fraudulent and void; the object being to weaken the Delegate's cause at Washington. The Judge had indeed given the decision a peculiar wording, probably out of deference to the wishes of "The Ring," but he had not ruled upon the merits of the case at all. He had merely sustained the demurrer and dismissed the case from court. It transpired, too, that the decision, which was read by the Judge, was in the handwriting of one of Mr. Campbell's attorneys. This fact fully accounted for the statements that Mr. Cannon's demurrer admitted that there was no record of his naturalization; that no proceeding for that purpose ever took place in court; and that the certificate held by him as a certificate of naturalization was obtained by fraud and had been fraudulently used.

As soon as it was learned that the Liberal agents were making use of this decision to advance the cause of their candidate, and prejudice that of his opponent, Mr. Brown, the latter's attorney,

moved in the District Court for the correction of the record as to the order sustaining the demurrer. Judge Hunter refused to grant the motion. Said he: "The order as entered simply states that on the statements or allegations of the complaint, and the effect of the demurrer, the demurrer was sustained. *Of course there could be no finding of facts as none were presented.* The finding is based solely on the legal effect of the demurrer."

The lie, however, had gone abroad, and, true to the proverb, had traveled many leagues while truth was getting its boots on. It was published as a fact at the City of Washinton that Delegate Cannon's citizenship papers had been declared null and void by the District Court at Salt Lake City. More than one member of Congress was thereby deceived, and the falsehood was actually used as an argument during the debate in the Utah case in the following December.

On the 19th of September, 1881, occurred the death of the murdered President, James A. Garfield, whose eleven weeks of painful, patient lingering, after being pierced by the assassin's bullet, had kept the hopes and fears of a nation, and of well-nigh all the world, in sorrowing suspense and sympathetic vigils at his bedside. The shock of the President's death was keenly felt in Utah. Garfield had been a warm friend to the Territory. The Mormons were arranging a grand celebration of Independence Day, on which occasion they designed opening Liberty Park—recently purchased by Salt Lake City—when the awful news of the bloody deed of July 2 caused the project to be abandoned.

Upon the issuance of President Arthur's proclamation appointing Monday, September 26, as a day of humiliation and mourning for the Nation's Dead,—which proclamation was supplemented by one of like tenor from Governor Murray to the people of Utah,—President John Taylor wrote to the Governor tendering the free use of the Tabernacle for memorial services. He replied, politely declining the courteous tender, as previous arrangements with the ministers of other churches for union services prevented its acceptance. The

Mormons, therefore, assembled by themselves and appropriately honored the memory of the departed. The Tabernacle was filled. Among those present were the First Presidency, several of the Apostles, the Presiding Bishopric, the Patriarch of the Church and the Presidency of the Salt Lake Stake of Zion. Elder C. W. Penrose offered prayer, and addresses were delivered by Apostle F. M. Lyman, Elder Aurelius Miner and President George Q. Cannon. Elder John Nicholson pronounced the benediction. Suitable music was rendered by the Tabernacle choir.

Of these services the American press, as a rule, gave fair and truthful accounts, and one would naturally suppose that at such a time prejudice and rancor would have slumbered universally, even in relation to the Mormons. Not so, however, if we may judge from the following item that appeared in the Boston *Watchman*, the organ of New England orthodoxy, soon after the event described:

It is an interesting fact that on the day set apart for prayer for the President \* \* \* the *Deseret News*, organ of the Mormons, declared that the "Praying Circle" of the Mormon Church was engaged in continual supplication for the death of President Garfield.

Said the *Deseret News*, the victim of this malicious slander: "The devil himself could not invent a more atrocious untruth." The *News* challenged the *Watchman* to produce its proof. This it could not do, for no such thing had been declared by "the organ of the Mormons," nor had anything been done to justify such a declaration.

The Boston *Watchman*, in uttering this falsehood, had only followed in the footsteps of many other journals and magazines, which, since early in 1881, had begun a systematic onslaught upon Mormonism, with the evident purpose of arousing the prejudice of the nation and bringing such a pressure to bear upon Congress that it would be compelled to reject the Mormon Delegate and enact prescriptive legislation against the unpopular Church. It was a crusade of calumny that had been inaugurated, and in it editors and clergymen, as well as politicians, did not hesitate to engage, with zeal rivalling that of Peter the Hermit in the mediæval ages.

A sample story that went the rounds of the press purported to be an account of a young Presbyterian clergyman named McMillan, who went to Sanpete Valley in the days of Brigham Young, and opened a school, the first known there, with a view to enlightening the young and ignorant Mormons. The author of the romance went on to tell how Brigham Young and "his nearest counselors," including George Q. Cannon, hearing of it, repaired to Sanpete, and before a full congregation, upon the Sabbath day, instructed his hearers to kill the unoffending minister; how three attempts were made upon McMillan's life; and how he withstood his would-be assassins by holding a loaded pistol in one hand while he preached to them with the Bible in the other.

The only true part of this tale is the fact that in 1875 or 1876 the Rev. Duncan J. McMillan, the young clergyman referred to, went to Sanpete Valley, presumably to found schools for the Presbyterians. There were many schools in Sanpete Valley at that time, one having been established in 1850. Mr. McMillan visited several of them, expressed himself favorably in relation to them, and by invitation addressed large assemblages of the Mormon children at Mount Pleasant and Ephraim. He was treated with the utmost respect and kindness during his stay. Neither on that nor any other occasion while in Utah did he preach with a pistol in his hand, nor did he ever need one to protect himself, against a Mormon congregation. Mr. McMillan himself, in a public meeting at Mount Pleasant, denied the truth of this sensational story, which had been published by the *Rocky Mountain Christian Advocate* and copied into various eastern journals before it appeared in the body of an article in *Harper's Monthly*. Mr. McMillan promised to publish his denial in the Utah papers, but it seems did not do so. The foregoing facts were all vouched for by reputable citizens of Sanpete County, Mormons and non-Mormons, and their sworn affidavits were published.\*

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\* See *Deseret News* (weekly) of January 4th and 11th, 1882, for affidavits of Canute Peterson, Henry Beal, Anton H. Lund, William T. Reid and many others.



*Camute Petersen*





The pistol and Bible story lacked even the merit of originality. The original canard, the object of which was to awaken interest and loosen the purse-strings of pious people in the East in behalf of the Christian missions in Utah, was invented and set afloat by the Rev. J. P. Lyford, a Methodist minister, who palmed it off as an incident in his personal experience at Provo, Utah County, several years before Mr. McMillan was heard of in these parts.\*

Most of the Protestant churches of the United States went into the Anti-Mormon crusade with weapons drawn and banners flying. From their pulpits all over the land an incessant cannonade continued during the sittings of Congress in 1881-2. Several of the churches held conventions and passed resolutions against Mormonism. It seemed as if the days of Arius and the Nicene Council had come again. The Methodists were the most pronounced in their opposition, insomuch that it was charged that they had not forgotten or forgiven the issue of the Pratt-Newman controversy of eleven years before. Evidently they wanted no more debates upon the Bible and Polygamy. A resolution adopted by them at a conference in Ogden, Utah, July, 1881, declared that polygamy "should not be reasoned with; it ought to be stamped out."

Dr. Talmage, of Brooklyn, went so far as to assert that Guiteau, the assassin of Garfield, was a Mormon, and by implication laid the responsibility of that awful deed at the door of the Latter-day Saints. The *Anti-Polygamy Standard* is said to have uttered something of the same sort. The murderer himself, from prison, denied the allegation, much to the satisfaction of the Mormons, who had no sympathy with the criminal or his crime.

An encyclical letter from the ministers of most of the churches in Utah, to their brother pastors throughout the Union, called for their "sympathy, prayers and efforts" in "putting a stop to the further spread of polygamy." They suggested that the Anti-Polygamy Law be amended in the following respects:

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\* See page 317, Vol. II.

(1.) So that the living together of the parties—or *co-habitation*, to use a legal term—shall be the proof of bigamy or polygamy, instead of the ceremony of marriage, because the latter is performed in secret within the walls of the Endowment House, in the presence of faithful Morinons only, and no one of these will bear testimony to the fact.

(2.) So that polygamy shall be a continuous crime, instead of being allowed, as now, to expire within three years by a statute of limitation.

(3.) So that the women shall be equally punishable with the men for this offense.

(4.) So that the accessories to the polygamous marriage shall be equally punishable with the principals.

(5.) So that the jury list may be increased to four hundred.

(6.) So that adultery, seduction, lewd and lascivious cohabitation, and kindred offenses may be punishable, as in the States and other Territories of the Union.\*

The ministers addressed were asked to use their influence with members of Congress in their respective districts to secure such legislation at the approaching session of that body.† The letter, which was dated at Salt Lake City, November, 1881, bore the names of Daniel S. Tuttle, R. M. Kirby, L. Scanlan, D. J. McMillan, G. D. B. Miller, R. G. McNiece, Lewis A. Rudisill, D. L. Leonard, T. B. Hilton and C. M. Armstrong. At least one of these names—that of Father Scanlan, of the Catholic Church—was appended to the docu-

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\* The Morinons were often charged with having no laws against adultery and fornication, and by implication were accused of ignoring and fostering such iniquities. The facts were these: An Act of the Utah Legislature approved March 6, 1852, made ample provision against those and other sexual crimes, and stood upon the statute books of the Territory for twenty-four years. It was not until plural marriage was sought to be punished as adultery and lascivious cohabitation under the McKean regime that the Legislature changed the law, superseding it in 1876 by the Penal Code adapted from the Code of California. Therein, while penalties were provided against rape, abduction, carnal abuse of children, seduction and prostitution, etc., the provisions of the old law in relation to adultery and lascivious cohabitation were omitted, simply for the reason that the penalties attaching to those crimes had been wrongly applied to persons living in plural marriage.

† The *Deseret News* said of this proposed union of Church and State against Mormonism: "There is a big noise over alleged connection between Mormonism and Utah politics, while at the same time Methodism and other isms are interfering in national politics, and urging legislation with all the Church influence they can command. It appears to be a heinous offense for Mormon Elders to have anything to do with secular affairs, but quite proper for Episcopal bishops, Presbyterian priests or Methodist preachers to engage actively in political affairs, especially in bringing a pressure to bear upon Congress antagonistic to the Latter-day Saints."

ment without the owner's knowledge or authorization;\* and the same may be true of others. Most of the reverend gentlemen named, however, undoubtedly affixed their signatures to the letter, which was read in Congress during the debates upon the Edmunds Bill.

When the Nation's law-makers met in December, a most bitter feeling prevailed against the Mormons almost universally. The Senate and House were fairly inundated with petitions from all parts, praying for speedy and effective action upon the Utah question. Early in the session several Anti-Mormon measures were introduced into both branches of Congress, among them the famous Edmunds Bill, which was destined to become law. It derived its name from Senator George F. Edmunds, of Vermont. The history of its enactment will be related in another chapter.

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\* Mr. A. M. Musser is authority for the statement that Bishop Scanlan so informed him.

## CHAPTER VI.

1881-1882.

THE CANNON-CAMPBELL CONTEST CONTINUED—THE OPENING DEBATES IN THE HOUSE OF REPRESENTATIVES—THE CASE REFERRED TO THE COMMITTEE ON ELECTIONS—THE EDMUNDS BILL FAVORABLY REPORTED—THE ANTI-MORMON AGITATION CONTINUES—DELEGATE CANNON'S DEVOTION TO DUTY—HIS DYING WIFE'S HEROISM—THE EDMUNDS BILL PASSES THE SENATE—THE PEOPLE OF UTAH PETITION CONGRESS FOR A COMMISSION OF INVESTIGATION—THE PRAYER OF SIXTY-FIVE THOUSAND CITIZENS IGNORED—THE UTAH ELECTION CASE REPORTED FROM COMMITTEE—THE CLIMAX REACHED—THE EDMUNDS BILL BECOMES LAW—THE UTAH DELEGATESHIP DECLARED VACANT.

THE opening debate in the Cannon-Campbell contest at Washington took place in the House of Representatives, on the 6th of December, 1881. The question came up on the proposed enrollment of Allen G. Campbell, as Delegate-elect from Utah.

The reader is already aware of the placing of George Q. Cannon's name upon the roll, by Mr. Adams, the retiring Clerk of the House in the Forty-sixth Congress; and of the efforts made by the Liberal leaders to nullify the advantage thus gained by the duly elected Delegate over the defeated yet hopeful standard-bearer of their party. The attempt to secure a judicial decision, declaring void Mr. Cannon's naturalization papers, had failed—though, as seen, this did not prevent the Liberals from representing to the contrary—and Mr. Campbell, who evidently expected, upon the strength of the certificate given him by Governor Murray, to be enrolled as a member of the House, leaving his opponent to cool his heels in the lobbies and ante-rooms of the Capitol, awaiting an opportunity to begin his contest, now found the tables turned upon him, his rival's name upon the roll, and himself the suppliant for Congressional



Allen S Campbell



recognition. Mr. Campbell, being a wealthy man, cared nothing for the compensation that was being drawn by Delegate Cannon. It was evident, however, that this was a source of chagrin to the Liberal managers, who needed the money, and depended upon the rich mine-owner to furnish the financial spring of the political catapult that was being used to foist him into power.

The debate in the House upon the proposed enrollment of Mr. Campbell—which formed the gist of a resolution offered by Mr. Haskell of Kansas—was substantially as follows:

Mr. Randall (Democrat) of Pennsylvania raised the point of order against Mr. Haskell's resolution and demanded that the Territorial delegates be sworn in.

Speaker Keifer (Republican) sustained the point of order and all the delegates except the one from Utah qualified.

The Speaker then said: "There is a controversy on the matter of the Delegate from Utah. There are several certificates—or, at least, two—held by two different gentlemen, and it is a matter, as the Chair understands it, that cannot be determined in advance, either by the old Clerk or the new Clerk, which should go on the roll and be called for the purpose of being sworn in."

MR. COX (Democrat) of New York.—I ask whether the name of a Delegate from Utah is not on the roll?

THE SPEAKER.—The Chair has already stated that as at present advised, he knows no law that authorizes any clerk to put a delegate on any roll.

MR. RANDALL.—There is a gentleman here claiming to be a delegate and this House must take cognizance of the fact. It is a question of the highest privilege, and must now be determined.

THE SPEAKER.—The Chair is of the same opinion.

MR. COX.—Why did the Chair ask the gentleman to step aside?

THE SPEAKER.—His name has never been called. The inquiry is of the House as to whether he shall be sworn in. The Chair recognizes no roll as far as delegates are concerned.

MR. RANDALL.—Does the Chair decide that it is not the right of a member to ask that the certificates should be read?

THE SPEAKER.—Yes; until the question is properly before the House.

The Speaker then recognized Mr. Haskell to offer a resolution.

MR. COX.—By what right did the Speaker call the other names?

MR. HASKELL.—He has not called any names. I am on the floor by recognition of the Speaker.

THE SPEAKER.—The Chair understands the law to be that the old Clerk is required to make up a roll of members and not of delegates.

MR. RANDALL.—Does the Chair decide that I, as a representative, have no right to call for the reading of those certificates; why did you call for the other delegates?

THE SPEAKER.—Because the Chair thought he had the right to call the names of those delegates, ascertaining that there was no challenge or controversy on those cases.

MR. COX.—But the Speaker cannot make the roll, the Clerk does that.

Mr. Haskell, after a good deal of confusion and noise, managed to offer his resolution, as follows:

“Resolved, That Allen G. Campbell, delegate-elect from Utah Territory, is entitled to be sworn in as delegate to this House on a *prima facie* case.”

Mr. Cox raised a point of order against the resolution, that Mr. Cannon's name was on the roll, and that the Chair was bound to recognize that fact.

Mr. Haskell called for the reading of Mr. Campbell's certificate.

Mr. Randall called for the reading of all the certificates, and the Chair stated that they should be read.

Mr. Campbell's certificate was read.

Mr. Haskell claimed that this was the only certificate from Utah, and objected to the reading of any other paper.



Mr. McLane (Democrat) of Maryland, contended that the Chair, having stated that all the certificates were to be read, could not withdraw that ruling.

Mr. Cox argued in support of his point of order, contending that under Sections 31 and 38, Revised Statutes, the Clerk was required to prepare the list of delegates, and in this opinion he was sustained by Mr. Herbert, of Alabama.

Mr. Robeson (Republican) of New Jersey, and Mr. Reed (Republican) of Maine, took the opposite view, the latter quoting a decision by Speaker Colfax, that the Clerk could not put on the rolls the names of delegates.

The Speaker overruled the point of order. The whole matter was then postponed until next morning.

The morning came, but with it no continuation of the debate. Permission was given by the House for the publication in the *Congressional Record* of the certificate given to Mr. Campbell, and the other documents relating to the Utah election. A few days later further consideration of the case was postponed until the 10th of January.

It was during the interim thus formed that the Edmunds anti-polygamy bill was introduced into Congress, being presented by Senator Edmunds on the 13th of December, a week after the beginning of the House debate in the Utah election case. The Edmunds Bill was similar in its provisions to a measure which had been introduced by Senator Christiancy in the Forty-fifth Congress. So close was the resemblance that the press dispatcher at Washington, in referring to the new presentment, said that it was the Christiancy Bill revived. Other Anti-Mormon measures were brought before both houses of Congress about the same time. The Edmunds Bill was referred to the Senate Committee on the Judiciary, of which Mr. Edmunds was chairman.

On the afternoon of the same day a souvenir from the Women's National Anti-Polygamy Society was laid upon the desk of each member of Congress. It consisted of a handsomely engraved card, bear-

ing on one fold the anti-polygamy paragraph of President Arthur's message to Congress, printed in letters of gold; and on the other fold, in letters of crimson, a statement recently made by Delegate Cannon, wherein he admitted that he was a member of the Church of Jesus Christ of Latter-day Saints, that in accordance with the tenets of said Church he had taken plural wives, who now lived with him and had lived with him for a number of years and borne him children, and that in his public addresses, as a teacher of his religion, in Utah, he had defended this tenet of the Church as being, in his belief, a revelation from God.\*

The closing part of the paragraph from President Arthur's message, which was dated December 6, 1881, read as follows:

Your attention is called to the decision of the Supreme Court of the United States explaining its judgment of reversal in the case of Miles, who had been convicted of bigamy in Utah. The Court refers to the fact that the secrecy attending the celebration of marriages in that Territory makes the proof of polygamy very difficult, and the propriety is suggested of modifying the law of evidence which now makes a wife incompetent to testify against her husband. This suggestion is approved and recommended; also the passing of an act providing that in the Territories of the United States, the fact that a woman has been married to a person charged with bigamy shall not disqualify her as a witness upon his trial for that offense. I further recommend legislation by which any person solemnizing a marriage in any of the Territories shall be required, under stringent penalties for neglect or refusal, to file a certificate of such marriage in the Supreme Court of the Territory, unless Congress make or advise other practicable measures for obviating the difficulties which have hitherto attended the efforts to suppress this iniquity. I assure you of my determined purpose to co-operate with you in any lawful and discreet measures which may be proposed to that end.

Each of the souvenirs bore this inscription: "Respectfully dedicated to the Forty-seventh Congress by the Women's National Anti-Polygamy Society of Salt Lake City, Utah."

In January, 1882, an article by Senator Edmunds, entitled "Political Aspects of Mormonism," appeared in *Harper's Monthly*, which, with the *North American Review* and other influential maga-

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\*The paper containing this admission had been filed with the other documents in the election controversy in order to save the House difficulty in determining the matter. Mr. Cannon began his statement by protesting that his position and views upon the subject of polygamy were not relevant to the issue.

zines, was opening its columns to a variety of contributions upon the Mormon question. In the Senator's article, the problem of "the eradication of polygamous institutions consolidated into one community consistently with republican theories of government and with Anglo-Saxon notions concerning the trial of persons accused of crime," was treated. Its author was evidently preparing the public mind for the enactment of the Anti-Mormon measure which bore his name.

On the 10th of January occurred the second debate in the House of Representatives over the Utah election case. It was upon a motion to adopt Mr. Haskell's resolution to seat Allen G. Campbell as Delegate from this Territory upon the *prima facie* evidence of his certificate; to which motion an amendment had been offered by Mr. Reed, of Maine, that the whole matter be referred to the Committee on Elections. The debate was quite spirited, three speakers supporting the original motion and seven arguing against it and in favor of the amendment. One of the former was Mr. Haskell, whose address, except where confined to the question at issue, was a bitter Anti-Mormon effusion. His peroration closed thus:

What will the country say, when, for the first time in the history of an American Congress, this House turns a microscopic, carping, pettifogging eye upon this [Campbell's] certificate, in behalf of that scarlet-robed harlot that sits enthroned amid the hills of Utah?

To this and other portions of the argument of the gentleman from Kansas, Mr. Cox, of New York, replied:

I submit to this House the question: What would be thought of a gentleman who comes here with a proposition to seat a person having 1,357 votes in opposition to a person which the record shows received 18,578 votes? \* \* \* I will not characterize it in unparliamentary language. I will not say that it is pettifogging: but I will say that to give to a man who has about thirteen-fourteenths only of the entire votes of the Territory which he claims to represent, a seat here, is very much in the nature of pettifogging, if not worse. \* \* \* .

Who gave this creature of the organic law, this creature of Congress, the right to take from Congress the power to decide on the qualifications of members? Does not the gentleman see the little quirk or quibble in this statement of the certificate, that Campbell is "a citizen;" the innendo being, as all the papers will show, that Cannon was not a citizen in the Governor's opinion, and therefore 18,000 votes are to go for nothing as against 1,300?

\* \* \* \* \*

Why, sir, if Mr. Cannon be an alien, it is a matter for us to decide; the Governor of the Territory has no right to set him aside because of some suspicion on that point. I am not arguing the question whether or not Mr. Cannon is an alien. I have, however, his certificate of naturalization here, on which I suppose this government proposes to pass as a sort of court. But the law recognized in New York and elsewhere is that a record of naturalization once made can not be set aside even upon an imperfect record.

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MR. VAN VOORHIS.—Does my colleague know that the certificate which he holds in his hand has been judicially decided by the court in which it is purported to be made, to be false, fraudulent and void?

MR. COX.—No such decision has ever been made.

MR. VAN VOORHIS.—I allege it has.

MR. COX.—I will tell you what impression the gentleman undertakes to give, and I want to warn the House of all such thin pretense. I mean that gentleman from New York, who is now retreating after his question. (Laughter.) Here is the fact. In a case raised in the court of Utah, of Campbell vs. Cannon, there was a demurrer put in by Mr. Cannon. The demurrer, as all demurrers do, raised simply a question of law, not of fact. The court, in deciding it, took for granted that the facts were as stated in the complaint when overruling the demurrer. The facts are not sustained on overruling the demurrer. \* \* \* What lawyer is there, even a tyro in the profession, what lawyer so pettifogging, so microscopic, as not to know that a demurrer does not ascertain the facts, even though formally they are admitted in the demurrer for the mere fictitious purpose of raising the points of law?

\* \* \* \* \*

This Governor, in his fantastic execution of the office, wanted to raise the Mormon issue. He thought that in the gush of moral sentiment against polygamy, there would be tempestuous times in Congress. He forgot that this matter was passed upon by Congress when he was in swathing clothes, and that if any power should prohibit a polygamous delegate, it should be Congress and not himself.

\* \* \* \* \*

Why, sir, if King Solomon were elected from Utah, Nevada or Rhode Island, with all his wisdom, the gentleman from Kansas would say that he was representing the "scarlet-robed" woman of Utah. (Laughter.) Why, sir, do you not remember that when the Pharisees of old went to the Savior with a woman that was taken in adultery, He said to them, "He that is without sin among you, let him first cast a stone at her"?

MR. HASKELL.—That is why I cast a stone.

MR. COX.—And it is said you cannot find a boulder now in that neighborhood. (Laughter.) Every Pharisee picked up all the stones within reach and flung them at that poor miserable scarlet-robed woman of Judea! If the gentleman from Kansas had been there he would have reached for a big boulder of the glacial period and hurled it at her and mashed the poor woman under its ponderosity. (Much laughter.)

But, Mr. Speaker, this question does not turn on polygamy. It does not turn on the color of a woman's robe. It turns on the votes of a Territory, and where you can ascer-

tain that from the record, you are bound, as men upholding the republican system, to let the man come in—if not now, hereafter—who represents the popular voice of the Territory. It is not a question of how many wives, but how many votes. (Laughter.)

The debate having closed, the vote upon the question was taken. It stood 189 to 24 in favor of the proposition to refer. Thus the matter went to the Committee on Elections.

Next day, Mr. Haskell, author of the resolution which had caused the discussion, presented another resolution which proposed to make polygamists ineligible to seats in the House. It being objected that as the Utah case had gone to the Committee on Elections, there was nothing germane to the subject of the resolution before the House, the gentleman from Kansas pleaded that it was a privileged question and ought to be immediately considered. The House, however,—to use the language of the *New York Times* in relation to the incident—“decided that a proposition to establish monogamy as a test of eligibility was not a question of privilege, and Mr. Haskell was cruelly snubbed in his attempt to get even with the ‘Scarlet Woman’ for his defeat of the day before.”

The Edmunds Bill was reported to the Senate from its Judiciary Committee on the 24th of January. Mr. Edmunds worked hard to have it advanced upon the calendar, and finally succeeded in having it set for hearing on the 15th of February.

The Mormon question continued to be agitated, and petitions and memorials without number, praying for legislation against the unpopular people of Utah, kept pouring into Congress from all parts. The magazines and journals were filled with false and inflammatory articles calculated to sow prejudice and hatred against the Latter-day Saints. The instances in which the latter were permitted to refute, in the same publications, the calumnies uttered concerning them, were remarkably rare. Hon. C. W. Penrose, editor of the *Deseret News* and one of the ablest of Mormon writers, prepared an article in answer to one written by Judge Goodwin, editor of the *Salt Lake Tribune*; but the magazine—*Harper's Monthly*—which had published the latter's contribution, refused any space for the reply.

Public meetings for the discussion of the burning issue of the hour were held in some of the principal cities. One of these convened at Farwell Hall, Chicago, on the 23rd of January. Among those present to lend the weight of his influence against the Mormons—influence not near so weighty as it once had been—was ex-Vice President Colfax. Bishop Fellows declared, at this or some other meeting, that if the measures then pending in Congress were not sufficient to heal the “political cancer,” there were three hundred thousand swords ready to cut it out. At a similar gathering in St. Louis, on January 30th, the following charges were made against the Mormon Church:

Its numbers are daily recruited by cunning appeals to the ignorance and base passions of men.

The vote of Idaho for Congressman was carried at a late election by a brief order of George Q. Cannon, directing the Mormons in that Territory to vote for a certain man.

The number of polygamous felons in that Territory is strongly increased by the importation from abroad of thousands who are ignorantly seduced or licentiously attracted to this shameful institution.

A large proportion of the whole number of polygamists are unnaturalized foreigners, who own no allegiance to our country or its laws.

Which openly derides the authority of the national government, preaches treason publicly, and makes polygamous rebellion a religious duty.

Degrading women, blotting out of their speech the very notion of home and all the sacred associations which it calls up, making a parody of religion.

It foolishly assumes to be defiant to and stronger than the Government.

These charges were ably answered by Elder M. F. Cowley, a Mormon missionary in the Southern States; the *St. Louis Globe Democrat* opening its columns for the refutation of the slanders previously published. Among other stubborn facts hurled by Elder Cowley at the St. Louis agitators was the following table of comparative statistics based upon the census of the United States:

Utah's pauperage	-	-	-	-	6 $\frac{1}{8}$ per cent.
Missouri's pauperage	-	-	-	-	14 “ “
Utah's insane and idiotic	-	-	-	-	5 $\frac{1}{2}$ “ “
Missouri's insane and idiotic	-	-	-	-	11 $\frac{2}{3}$ “ “
Utah's convicts	-	-	-	-	3 $\frac{1}{9}$ “ “
Missouri's convicts	-	-	-	-	8 $\frac{3}{4}$ “ “

Utah's illiteracy	-	-	-	-	11½ per cent.
Missouri's illiteracy	-	-	-	-	21⅔ " "
Utah's printing and publishing	-	-	-	-	13¾ " "
Missouri's printing and publishing	-	-	-	-	6½ " "

The effect of these Anti-Mormon meetings was to still further embitter the people of the nation against the Mormon community. In some parts of the South mobocracy became rampant; Elders from Utah were insulted and reviled, and houses at which they chanced to be staying were repeatedly beset by armed ruffians and in some instances riddled with bullets.

Not alone did the orthodox churches combine to help on the crusade against Mormonism. Nearly all the religious societies lent themselves to the movement. The Josephites joined in the general hue and cry against their "heretical brethren in Utah"—by them styled "Brighamites"—and sent delegates to Washington—Z. H. Gurley and L. E. Kelley—to assist the Liberal cause and urge Congress to take action against "polygamy and its kindred evils."

It may well be surmised that with all these agencies at work in opposition to him, Delegate Cannon, at his post in Washington, was kept busy warding off, as best he might, the blows showered upon him and the cause he represented. Like ancient Horatius at the Roman bridge, beating back the Tuscan legions advancing to attack the Eternal City, never turning his face from the foe until the bridge went down, and he was free to swim to the farther shore; Utah's faithful Delegate stood confronting the bristling host of political and religious adversaries that swarmed against him, fighting valiantly to the end, and retreating not from his position until the last plank of hope fell from beneath his feet and he was at liberty to return with honor to his home.

A touching incident of his experience, illustrating the heroism and self-abnegation of a typical Mormon matron, occurred during that memorable winter. His first wife, Mrs. Elizabeth Hoagland Cannon, a woman of noble character, to whom he was fondly attached, lay dying at Salt Lake City, three thousand miles from her

husband's post of duty. Knowing that her final summons had sounded, she bade farewell to those of her family who were with her—her sons John Q. and Abraham being absent in Europe—and prepared for her departure. Nothing could have been more desirable to her than the presence of her husband, whose deep affection she fully returned. Putting aside this natural feeling, however, and permitting no selfish thought to intrude upon her strong sense of duty, she dictated, two days before her death, the following dispatch to her absent partner: "Remain at your post. God can raise me up, if it is His will, in answer to your prayers there, as well as if you were here. All is being done for me that can be done."

It is needless to add that no private consideration would have kept Delegate Cannon from the bedside of his dying wife. A telegram to that effect was sent by him to his brother Angus. In it he averred that his duty to his constituents and the cause for which he was striving, imperatively demanded his presence at the Capital.

The pure spirit of his sainted wife passed from its earthly tenement on the 25th of January. Just one day before that event, the Edmunds Bill was reported from the Committee and placed upon the calendar of the Senate of the United States.

The debate upon the bill, prior to its passage by the Senate, occurred on the 15th and 16th of February. It took a wide range and was intensely interesting, able speeches being delivered on both sides. The back-bone of the arguments was the question of the power of Congress over the Territories and the rights of citizens of the Territories under the Constitution. The nature of the bill—which will be given later in its entirety—may be inferred from the following paragraphs of the speeches delivered against it:

SENATOR CALL, of Florida.—It seems to me that this measure is one that ought not to be adopted by the Senate. It is an act that virtually declares that the President may give the whole political power of elections in the Territory of Utah to five persons, nominated by himself and confirmed by the Senate. It seems to me that if there is anything in the institutions of this country and in the idea of self-government, that is a proposition which destroys the whole of it. \* \* \* I think you can find better means of stamping out polygamy than one which stamps out the institutions of the country. \*



\* \* The bill proposes to be a bill for the punishment of bigamy in the Territories of the United States and in places where it has exclusive jurisdiction. It destroys one government and organizes another for the purpose of giving efficiency to provisions for punishing this crime. It does not stop there ; it constitutes tribunals which are partial, and in which it expressly and deliberately provides that the person charged with crime shall not have an impartial trial. It imposes a religious test upon the jurors, which is in violation of the cardinal provision of the Constitution of the United States, that when a man is charged with crime he shall have a fair and impartial trial. It imposes a religious test by which persons entertaining that opinion are excluded from the juries who are to try individuals charged with this crime. If there be anything sacred in the history of American jurisprudence and American liberty, it is that a person charged with crime shall have a fair and an impartial trial by a jury of his peers, and not by a packed jury selected of men known to be opposed to him and prejudiced against him, and a religious test imposed upon them for their qualification as jurors.

SENATOR VEST, of Missouri :—The seventh and eighth sections\* of this bill simply provide for an anomaly in the jurisprudence of the United States, and establish a doctrine that, in my judgment, strikes down the fundamental principle of American liberty. If there is one single clause in our Constitution or bill of rights dear to the American heart, it is that no citizen shall be deprived of life, liberty, or property without the judgment of his peers or of a competent tribunal. The idea that any citizen can have taken from him a right conferred by law, without the judgment of a competent tribunal and without a trial, is abhorrent to every principle of personal liberty and constitutional right. It is the very essence of good government and of freedom and of constitutional right that every man should be tried and convicted before punishment. The seventh section of this bill takes away from a citizen of the United States the right to vote or hold office before conviction by his peers of any crime.

\* \* \* \* \*

If this be not a bill of attainder under the theory of the Constitution of the United States, there never has been a bill of attainder proposed in all history. Never in the darkest days of the Stuarts or the Tudors, never in any of the darkest days of despotism, I undertake to say here, weighing my words deliberately, was there ever enacted a statute more exactly within the meaning of a bill of attainder than the seventh and eighth sections of this bill.

\* \* \* \* \*

While I abhor polygamy, while I have denounced it, while I have introduced the two first bills introduced in this Senate against it, I revere the Constitution of my country, and the rights of personal liberty guaranteed to every American citizen. I tell you now, Senators of the United States, pass the bill and you establish a precedent that will come home to plague you for all time to come. The feeling that today exists against polygamy, may exist tomorrow against my church, against any class in this broad land, and then—what this Constitution meant to guard against—the waves of passion mounting high, we shall be told that the Constitution of the United States enabled Congress to pass this act, which

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\* Sections eight and nine of the Edmunds Act.

in its every feature is a bill of attainder, denounced by that instrument as against public policy and absolutely void. \* \* \* Ah, but we are told that there is no punishment in this bill. We are told that taking away the right of suffrage is no punishment. Mr. President, we in this bill take away the right to hold office, and the Supreme Court has decided *in totidem verbis* that that is a punishment as much as if a man be convicted and sentenced to the penitentiary.

SENATOR MORGAN, of Alabama:—When I first looked over this bill I became satisfied that it contained some very grave constitutional difficulties. \* \* \* It is therefore a question which is not to be treated in the spirit of madness. \* \* \* I think if it was ever becoming in the American Senate to proceed with coolness and quietness and deliberation, carefully searching every inch of the ground upon which we plant our feet, it is at this very moment of time, when there is a great cry against polygamy in the Territory of Utah under Mormon influence. \* \* \* A gentleman is said to occupy a seat on the floor of the House of Representatives as a Delegate from Utah, who is a Mormon. It has been frequently said that he is a polygamist, that he has a plurality of wives, and belongs to the Mormon Church. Would it be the effect of this bill, if it should pass both houses and be signed by the President of the United States, to disqualify him from holding the office that he now occupies? So I read the seventh section, and no member of the committee denies, I believe, that that is the proper construction. \* \* \* This, Mr. President, is to all intents and purposes, an *ex post facto* law. \* \* \* It undertakes to create a crime and punish a man for the commission of it at a time before the statute itself was enacted, certainly before this method of punishment was prescribed; and if I understand anything in reference to constitutional law, it is that you cannot impose a new punishment upon one who has been guilty even of a crime against the law, so as to make it retroactive in its effect and in its operation.

\* \* \* \* \*

I am not willing to persecute a Mormon at the expense of the Constitution of the United States. I am not willing to go to the Indian tribes where polygamy is practiced and take up those men and inform them that they shall not have the right to life or liberty because they are polygamists; and we have just the same right to tell an Indian that he shall not live because he is a polygamist, as we have to tell a Mormon that he shall not vote because he is a polygamist, provided we make that the penalty of the crime, and give the power to a legislative tribunal to declare his crime and punish it. We must be cautious in times like these how we employ our power.

SENATOR BROWN, of Georgia:—I am very well aware that there is a great popular clamor for the passage of this bill, or some very rigorous and severe bill for the suppression of Mormonism. \* \* \* I am no advocate of polygamy. \* \* \* I am ready to unite in imposing such penalties as we can constitutionally impose within the United States upon those who practice it, because of its immorality. And yet I am obliged to admit, and we are all obliged to admit, that it is practiced and popular sentiment sustains it among three-fourths of the whole population of the globe. \* \* \* England has had this same question to deal with. When she assumed the dominion of India she found polygamy there and it has been there from time immemorial. They did

not do what popular sentiment seeks to compel us now to do. The English people did not attempt to crush it out by law, but the British Parliament and the British courts recognized it in India, on assuming control, and recognize it today. Indeed they dare not do otherwise. They can enforce no law in India that proposes to exterminate polygamy.

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Not only do the British Parliament and the British courts recognize it, but the missionaries of all Christian churches in India recognize it, and do not attempt to overthrow it where the marriage has already been solemnized.

\* \* \* \* \*

Again, it cannot be denied that polygamy was tolerated by the Old Testament, and many persons believe it is not prohibited by the New. \* \* \* There are those in the Mormon Territory who believe that there is a divine revelation later than the New Testament which authorizes a member of the Mormon Church to have more wives than one. They believe in the revelation, as they term it, made by God Himself to their prophet, Joseph Smith. I do not believe in it, but they religiously believe it. Many of them are as earnest and honest in their faith as I am in the Baptist faith, or as other Senators are in the Methodist or Presbyterian faith. I think they are greatly in error, but I have no more right, if they do not practice it, to disfranchise them on account of that belief, than I have to disfranchise any Senator in this chamber, or any man out of it, who believes that the New Testament does not forbid polygamy. \* \* \*

They maintain the lawfulness of polygamy. Then, according to the definition given by Webster, they are polygamists; and then, according to this bill, they are every one disfranchised. It is a sweeping disfranchisement of almost the entire people of a Territory. And in order to carry out that disfranchisement we must resort here to a practice better known in the South than it has been in the North. Whenever it is necessary to make a Republican State out of a Democratic State, or a Republican State out of a Democratic Territory, the most convenient machinery for that purpose is a returning board and it has worked admirably in the South. By fraud, perjury, forgery and villainy the returning board system cheated the people of the United States out of a legal election for President. It does not therefore specially commend itself to the American people. It stinks in the nostrils of honest men.

\* \* \* \* \*

In my opinion the people of Utah have at least one good quality, and that is that an overwhelming majority of them are Democrats. If we ever reach a point where they are to be admitted into the Union, they have a right to come in as a Democratic State; but under this returning board legerdemain, it is very fair to presume that they will not be permitted to so come. \* \* \* And there may be a very good political reason, just there, why the whole population, almost *en masse*, should be disfranchised. If they are permitted to vote, there is no chance for a Republican State. \* \* \* I cannot vote for the bill in its present shape.

SENATOR LAMAR, of Mississippi:—This bill does not meet the approval of my judgment. I am not only opposed to the provisions which have already been discussed so ably by gentlemen, but to the policy of the legislation which the committee propose. In

my opinion, sir, it is a cruel measure, and will inflict unspeakable sufferings upon large masses, many of whom are the innocent victims of a system. I do not think that the bill has been sufficiently considered in view of the importance of its provisions.

Thus the debate went on. In vain the advocates, not of polygamy, but of justice and equal rights, even for Mormons, sought to stem the tide of prejudice and passion that bore down and overwhelmed the opposition presented by the brave defenders of the Constitution. "There is no Constitution but the will of the people," Senator Edmunds is reported to have remarked, and "the will of the people" was now the will of an angry mob, no more amenable to reason than the raging waves of the sea, lashed to fury by a tempest. Doubtless many who voted for the Edmunds Bill did so from choice, being in full sympathy with the measure. There were some, however, who supported it against their inclination, fearing it would displease their constituents if they listened to the dictates of conscience and regarded their oaths to sustain the Constitution. All were more or less influenced by the terrible rush and roar of the Anti-Mormon crusade; a hurricane of hatred and bigotry, before which statesmen, usually strong-minded and courageous, bent like willows in a storm. It was Thursday, the 16th of February, when the bill passed the Senate.

On that very day the Utah Legislature, which had been in session for several weeks, adopted a memorial praying Congress not to act hastily upon the extreme measures then pending before it, inimical to the people of this Territory, and asking for a commission of investigation. This memorial, presented by Moses Thatcher in the Council, was signed by Joseph F. Smith, President of the Council, and Francis M. Lyman, Speaker of the House, and telegraphed to Washington the same evening. Later, another memorial, giving reasons why a commission of investigation should be sent, was drafted by a special joint committee of both branches of the Assembly, unanimously adopted and signed by the officers and members thereof, and a printed copy sent to the President of the United States, each member of his Cabinet, each Senator and Representative in Congress, and other government officials and prominent persons.

This memorial stated that for many years the people of Utah had patiently endured the misrepresentations and slanders of unscrupulous persons who had located at different times in the Territory, and who, from various unworthy motives, had formed themselves into political and religious cliques avowedly to represent the liberal and progressive element of the Territory, but really to vex and annoy the majority of the people and deprive them, if possible, of their civil, religious and political rights. It then proceeded to enumerate cases in point. When accused of exercising undue influence over the female portion of the population, the Territorial Legislature had passed the Woman Suffrage Act, and when accused of allowing priestly authority to exercise influence at the polls, by reason of the marked ballot, they had enacted a registration law, making the ballots strictly secret. The government of the Territory still remaining with the majority, Congress was now asked to interfere in order to transfer it to the minority. The people of Utah had been falsely charged with being immoral and corrupt, and yet drinking saloons, gambling dens, billiard halls and houses of prostitution had been introduced and recommended by their accusers for their regeneration. It had been frequently asserted that the affairs of the Territory were under the control of foreign-born citizens; yet the present Legislature contained twenty-seven American-born and but nine naturalized citizens. The people of Utah were accused of being opposed to education. Statistics demonstrated the contrary. A Territorial tax equal to that from which the entire revenue of the Territory was derived, was annually assessed, collected and disbursed exclusively for payment of school teachers in district schools, open to the children of all citizens, irrespective of creed, color, or party; while in addition, a local option law permitted a tax not exceeding two per cent. for general school purposes to be annually assessed in the district where the people by popular vote so elected. In 1875 it was falsely represented to Congress that the Legislative Assembly of Utah had not made any provision, and would not provide, for jurors' and witnesses' fees and other expenses of courts in criminal cases.

Without sufficient investigation Congress diverted the amount appropriated for legislative expenses of this Territory to the uses of the courts, with the provision that if the Legislature would appropriate \$23,500 for such uses the money might be recovered. The Assembly appropriated \$22,000 for court expenses, and at its next session a deficiency appearing, \$18,000 more was appropriated to cover it, making \$40,000 instead of \$23,500, and yet the members and officers of the Assembly had not received one dollar for their *per diem* and other legislative expenses of the session of 1876. Other charges were answered and other facts presented in refutation thereof. Governors, Judges and other Federal officials had often used their authority to annoy and oppress the people. Governor Murray's conduct in the matter of the election certificate was cited as an instance, as was his frequent use of the veto power over the acts of the people's representatives. The military authorities came in for their share of criticism. Said the memorialists:

When soldiers stationed near us have been arrested for grossly violating the municipal laws, they have been forcibly released by military authority. Others have quietly enjoyed their quarters, even when the general was appealed to for military aid, while the militia of the Territory were compelled to defend the homes of the people from the hostile encroachments of Indians who had plundered and killed defenseless citizens.

Upon the subject of polygamy they said:

We call the attention of your honorable body to the fact that previous to the passage of the anti-polygamy act of 1862, there was no law in force, local or Congressional, against the marriage of plural wives in Utah. There are many persons who contracted plural marriages before that time, who have never violated that statute, and who have remained unmolested in their family relations. They cannot be convicted of crime because they have broken no law, yet the legislation proposed to your honorable body would disfranchise them and deprive them of the inalienable rights of citizens, which we submit is both unnecessary and unjust.

\* \* \* \* \*

We respectfully urge that while this Territory is deprived of any representation in Congress, through the act of the executive, generally recognized as usurpation and fraud, it is most unfair to us that a measure should be rushed through the National Legislature no voice from the people against whom this special legislation is designed being lifted in their behalf or heard in their defense.

The memorial closed thus:

We further respectfully represent that there is no cause for the disruption of our

local government. The taxes are light, good order is maintained, no person is deprived of life, liberty or property without due process of law; the ballot is free and secret, all religions and political societies are equal before the law; peace prevails, property is secure, industry abounds and the material interests of the Territory are in a flourishing condition. We submit therefore that it is impolitic and unstatesmanlike to disarrange the political machinery of this whole commonwealth in an effort to punish the alleged offenses of a few individuals, and that a full investigation of our internal affairs will show that a widespread excitement has been raised on a very small and fragile basis.

This action of the people's representatives was supplemented by mass meetings of citizens in various parts of the Territory, and four mammoth petitions, signed respectively by men, women and the youth of both sexes, denying the falsehoods and detractions set afloat concerning them, and asking for a fair and full investigation of the charges, were prepared and sent to Washington. The signers of these petitions aggregated over sixty-five thousand souls.

Said the men in their memorial:

Whatever of polygamy exists among the Mormons rests solely upon their religious convictions. It is unsupported by any Territorial legislative enactments, and its practice already exposes them to the penalties of Congressional law. And it is better to leave it to the legitimate operations of that law, and the moral influences at work, than to attempt to extirpate it by radically oppressive or revolutionary measures.

Said the women:

We your petitioners hereby testify that we are happy in our homes, and satisfied with our marriage relations, and desire no change. \* \* \* And we most solemnly aver before God and man that our marital relations are most sacred, that they are divine, enjoining obligations and ties that pertain to time and reach into eternity. Were it not for the sacred and religious character of plural marriage, we should never have entered upon the practice of a principle which is contrary to our early teachings, and in consequence of which our names are cast out as evil by the Christian world.

The young men made this declaration:

We deny that the religious institution of plural marriage, as practiced by our parents, and to which many of us owe our existence, pollutes or in any way degrades those who enter into it. On the contrary we solemnly affirm, and challenge successful contradiction, that plural marriage is a sacred religious ordinance, and that its practice has given to thousands honorable names and peaceful homes where Christian precepts and virtuous practices have been uniformly inculcated, and the spirit of hur an liberty and religious freedom fostered from the cradle to maturity.

The following paragraph is from the document signed by the young ladies:

We have been taught, and conscientiously believe, that plural marriage is as much a part of our religion as faith, repentance and baptism. \* \* \* We solemnly and truthfully declare that neither we nor our mothers are held in bondage, but that we enjoy the greatest possible freedom, socially and religiously; that our homes are happy ones and we are neither low nor degraded: for the principles of purity, virtue, integrity, and loyalty to the government of the United States, have been instilled into our minds and heart since our earliest childhood.

Another petition was circulated for signatures among Mormon and Gentile business men. A few of the latter signed it, but many, fearing the lash of the Anti-Mormon press,—which promptly stigmatized the Gentile signers as “Jack-Mormons”—declined to append their names to it. Yet all they were asked to do was to testify that under Mormon rule Utah had developed in a material way, and request Congress to give to all legislation proposed in relation to the Territory “grave consideration,” that nothing might be done “to retard the existing and increasing prosperity.”

The preparation and transmission of these memorials proved a striking example of “love’s labor lost;” the majority in Congress turning a deaf ear to all appeals save those from Anti-Mormon sources.

On the 25th of February, the House Committee on Elections reached a decision in the Utah election case. After four hours’ deliberation the committee, on motion of Mr. Hazelton, adopted the following resolutions:

RESOLVED—That Allen G. Campbell is not entitled to a seat in this Congress as Delegate from the Territory of Utah.

RESOLVED—That George Q. Cannon is not entitled to a seat in this Congress as Delegate from the Territory of Utah.

RESOLVED—That the seat of Delegate from that Territory be and is hereby declared vacant.

The first resolution was adopted unanimously; the others by a vote of ten to five. The Committee, with one exception, were



unanimous in the view that Delegate Cannon's citizenship was valid, and that he had received the highest number of legal votes cast at the election. The main question dividing the Committee was whether or not polygamy was a disqualification to the office of delegate. The majority in their report took the ground that Mr. Cannon's avowal that he had married plural wives and had defended the polygamous tenet of his church, proved him to be disqualified. No law was cited to sustain this position, but it was argued that delegates were not members; that they were not Constitutional officers and only sat in the House by grace of Congress; that the House by a majority vote might exclude a delegate for any reason, and as Mr. Cannon was living in polygamy, which was a violation of Congressional law, he could and should be declared ineligible to a seat.

The minority, on the other hand, stated that they could find no case reported since the formation of the Government that made any distinction between the qualifications of a Member from a State and a Delegate from a Territory, and that if the Constitutional standard were not adopted as to qualifications, there was no rule for the government of the House as to delegates. They pertinently inquired: "If a delegate from a Territory is not a member by virtue of the Constitution and laws, then what rule or law do you apply to him? Is it arbitrary will, or the caprice of the House at each session?" They also cited the decision of the committee of the Forty-third Congress, in the Maxwell-Cannon contest, when it was declared both in the majority and minority reports that the only qualifications required for a delegate were those required for a member of the House, and the rule was established that "delegates from Territories are entitled to the Constitutional limitations as to qualifications, and that polygamy is not a disqualification." They went on to say that as Mr. Cannon's polygamy was a matter of religion, he was entitled to protection under the Constitution; he had received a clear majority of the legal votes for delegate; the people whom he represented had elected him, and as

they were satisfied with him, the House should be content; he had been convicted of no crime, and there was no law on the statute book disqualifying him as a delegate; he possessed the necessary qualifications and was fully entitled to the seat. A resolution to that effect accompanied the views of the minority.

Other members of the Committee filed written opinions showing that Mr. Cannon's avowal of the practice of plural marriage did not admit that he had violated the Anti-polygamy law, and that it was not in evidence that he had broken any law, "living in polygamy" not being violative of the statute of 1862.

And so the matter went back to the House, which, however, did not proceed to consider the report until the latter part of April.

In the interim the Edmunds Bill, which had passed the Senate, was "railroaded" through the House of Representatives. The entire discussion occupied only two hours; little or no opportunity was given for amendments; speeches were limited to five minutes each, and every effort was made by the friends of the bill, who were in the majority, to prevent a full and free discussion of its provisions.

A preliminary discussion had occurred on the 13th of March, the day before the debate proper; Mr. Converse, of Ohio, raising a point of order, claiming that the measure should be considered as in Committee of the Whole, since it provided for officers—the five Commissioners to be appointed by the President—whose salaries would have to be paid out of the National Treasury.

Mr. Haskell, of Kansas, who, as chief stone-thrower at "the Scarlet Woman," had charge of the bill in the House, opposed the reference to the Committee of the Whole, which would have resulted in a fuller discussion, and in his desperation took the untenable ground that the five Federal appointees would be Territorial officers, and as such would be paid by the people of Utah. Speaker Keifer ruled against the point of order, and after a protracted but vain struggle on the part of those who opposed the bill to let daylight in upon its darkness, a recess was taken.

Next morning, March 14, the House resumed consideration of



*H. H. Chisholm*



the Edmunds Bill. It was a noisy and tumultuous session. The Speaker was obliged to request members to take their seats in order that business might proceed. The same tactics that prevailed the day before, by which a thorough discussion of the measure was prevented, were resorted to by its friends, with some honorable exceptions. The latter contended for the right of their opponents to discuss the bill prior to its passage. Finally by unanimous consent a compromise was effected by which one hour was to be allowed for amendments and debate under the five minute rule; the previous question was then to be ordered and one hour for further debate allowed, to be equally divided between both sides.

The speeches in substance were much the same as those delivered in the Senate. Here are a few excerpts:

MR. BUCKNER.—I believe, and I am sorry to say I believe, that one of the main purposes for which this bill is being pushed through this House with such unseemly haste is that it may be brought up (as it can be if the other side is willing to forego all right and justice) to foreclose the case of Cannon *vs* Campbell, and to give countenance to that great wrong committed against the right of suffrage by a weakling executive, at the command of somebody, I know not whom.

MR. CALKINS.—My report, which the gentleman will find upon the files of this House, gives the views of myself and a majority of the committee on elections; and those views are based upon a very different ground from that which the gentleman from Missouri now assumes.

MR. BUCKNER.—If the gentleman can vote to keep out Mr. Cannon, then I can see very well how he can vote for the enormity in this bill, which gives to a board of canvassers to be appointed by the President the very same infamous power exercised by the executive of the Territory. \* \* I hope my friends on the other side will not bring this bill up to influence that election case; but I say the bill is broad enough to be used in that way, and I have a fear that the object in pushing it with such hot haste is that it may be used for that very purpose, of deciding finally the question involved in that election case. By the amendment which I wished to offer, my object was to preclude any such possibility.

MR. BELMONT.—I shall not vote for this bill, because I desire effective and proper legislation against polygamy, and because I am not willing to submit to trial a measure so ill-considered that its evil consequences may easily be foreseen. \* \* Many who content themselves with voting in its favor say that it will disappoint its framers and will not accomplish the purpose for which it is intended; and I feel satisfied that such is the fact.

MR. HEWITT.—Polygamy can be stamped out without resorting to a remedy which, if generally applied, would vitiate our whole political system and convert our elections

into a mockery of justice. No consideration of expediency, no amount of clamor from persons, however worthy, who are ignorant of the fundamental conditions by which civil liberty exists, will ever induce me to give assent to a remedy which, worse than the disease, is based upon a doctrine so radically wrong that its admission into our code of political ethics would be fatal to free government elsewhere than in Utah.

MR. BLANCHARD.—I am ready at any and all times to dispose summarily of polygamy, but even in these degenerate times (politically speaking) I find I have still left sufficient reverence and veneration for that grand old instrument bequeathed to us by the fathers of the Republic to prevent me from violating its letter or spirit. \* \* \* We in Louisiana, Mr. Speaker, have had some experience with returning boards. The monster originated there, having been the unholy offspring of political corruption and greed of usurped power. Our experience with him was a painful and bitter one before he was finally throttled. We would therefore spare the people of Utah, whether they be Gentiles or Mormons, the infliction. A returning board is too great a punishment even for a Mormon.

MR. HERBERT.—Sir, I have denounced returning boards a hundred times. Shall I now, by this very political party I have so often arraigned for resorting to such methods, be compelled to vote for a returning board myself? No, sir; never! Never will I sanction by my vote such a sham, such a hollow mockery of liberty, as setting up a semblance of Republican government and giving a board of five men and their appointees all the substance of power—the power to undo whatever the voters have done; the power to mould and shape the politics of a Territory to suit themselves. If gentlemen on the Republican side of this House are unable to frame a bill to suppress the evils of polygamy without violating every sound principle of legislation, let them open the bill to amendment, and we will perfect it for them.

As in the Senate, the bill found most of its supporters on the Republican side of the House, and most of its opponents on the Democratic side. Some of the speeches were very bitter; that of Mr. Cassady, of Nevada, descending to personalities against Delegate Cannon and the late President Young. Mr. Haskell closed the debate with an assault upon “the Mormon hierarchy.”

The bill passed the House by a vote of 199 to 42; 51 members not voting. On the 22nd of March it received the signature of President Arthur and became a law of the land. The full text of this measure is here given:

Be it enacted, etc.;

SEC. 1. That section fifty-three hundred and fifty-two of the Revised Statutes of the United States, be, and the same is hereby, amended so as to read as follows, namely:

Every person who has a husband or wife living who, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter marries another

whether married or single, and any man who hereafter simultaneously, or on the same day, marries more than one woman, in a Territory or other place over which the United States have exclusive jurisdiction, is guilty of polygamy, and shall be punished by a fine of not more than five hundred dollars and by imprisonment for a term of not more than five years; but this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract.

SEC. 2. That the foregoing provisions shall not affect the prosecution or punishment of any offense already committed against the section amended by the first section of this act.

SEC. 3. That if any male person, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court.

SEC. 4. That counts for any or all of the offenses named in sections one and three of this act may be joined in the same information or indictment.

SEC. 5. That in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, it shall be sufficient cause of challenge to any person drawn or summoned as a jurymen or talesman, first, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, or that he is or has been guilty of an offense punishable by either of the foregoing sections, or by section fifty-three hundred and fifty-two of the Revised Statutes of the United States, or the act of July first, eighteen hundred and sixty-two, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah;" or, second, that he believes it right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman; and any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge, and other evidence may be introduced bearing upon the question raised by such challenge; and this question shall be tried by the court. But as to the first ground of challenge before mentioned, the person challenged shall not be bound to answer if he shall say upon his oath that he declines on the ground that his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him for any offense named in sections one or three of this act; but if he declines to answer on any ground, he shall be rejected as incompetent.

SEC. 6. That the President is hereby authorized to grant amnesty to such classes of offenders guilty of bigamy, polygamy, or unlawful cohabitation, before the passage of this

act, on such conditions and under such limitations as he shall think proper; but no such amnesty shall have effect unless the conditions thereof shall be complied with.

SEC. 7. That the issue of bigamous or polygamous marriages known as Mormon marriages, in cases in which such marriages have been solemnized according to the ceremonies of the Mormon sect, in any Territory of the United States, and such issue shall have been born before the first day of January, anno Domini eighteen hundred and eighty-three, are hereby legitimated.

SEC. 8. That no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to or be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States.

SEC. 9. That all the registration and election offices of every description in the Territory of Utah are hereby declared vacant, and each and every duty relating to the registration of voters, the conduct of elections, the receiving or rejection of votes, and the canvassing and returning of the same, and the issuing of certificates or other evidence of election in said Territory, shall, until other provision be made by the Legislative Assembly of said Territory as is hereinafter by this section provided, be performed under the existing laws of the United States and of said Territory by proper persons, who shall be appointed to execute such offices and perform such duties by a board of five persons, to be appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall be members of one political party; and a majority of whom shall be a quorum. The members of said board so appointed by the President shall each receive a salary at the rate of three thousand dollars per annum,\* and shall continue in office until the Legislative Assembly of said Territory shall make provision for filling said offices as herein authorized. The secretary of the Territory shall be the secretary of said board, and keep a journal of its proceedings and attest the action of said board under this section. The canvass and return of all the votes at elections in said Territory for members of the Legislative Assembly thereof shall also be returned to said board, which shall canvass all such returns and issue certificates of election to those persons who, being eligible for such election, shall appear to have been lawfully elected, which certificates shall be the only evidence of the right of such persons to sit in such Assembly: *Provided*, That said board of five persons shall not exclude any person otherwise eligible to vote from the polls on account of any opinion such person may entertain on the subject of bigamy or polygamy, nor shall they refuse to count any such vote on account of the opinion of the person casting it on the subject of bigamy or polygamy; but each house of such Assembly, after its organization, shall have power to decide upon the elections and qualifications of its members. And at or after the first meeting of said Legislative Assembly whose members shall have been elected and returned according to the provisions of this act, said Legislative Assembly may make such laws, conformable to the organic act of said Terri-

\* Afterwards raised to five thousand dollars per annum.



tory and not inconsistent with other laws of the United States, as it shall deem proper concerning the filling of the offices in said Territory declared vacant by this act.

One act in the drama yet remained unplayed. The Utah election case was still undecided. It was argued in the House of Representatives on the 18th and 19th of April, and resulted in the adoption of the report signed by a majority of the Committee on Elections, declaring vacant the seat of the Utah Delegate. The arguments were full and elaborate and covered practically the same grounds as those of the majority and minority reports, the House being divided, as the Committee had been, upon the question. The speech of Mr. House, of Tennessee, was particularly fine.\* The whole debate hinged upon the subject of polygamy. Delegate Cannon's citizenship, the validity of which was not doubted except by a very few, cut no figure in the discussion. It was held that Delegates were not members, and might be excluded for any cause that the House saw fit to institute. What Senator Morgan and Mr. Buckner foresaw would be done, was done; the recently enacted Edmunds law, which debarred polygamists from holding office, was cited as a reason why Mr. Cannon, an avowed polygamist, should not be allowed to sit in Congress.

Hon. George Q. Cannon was permitted to address the House before the final vote was taken. It was on Wednesday the 19th of April that he delivered his speech. He briefly sketched Utah's

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\*After satirizing the report of the Committee on Elections, Mr. House paid his respects to the Edmunds Law, which he also opposed. Said he: "Let the carpet-bagger, expelled finally from every State in the American Union with the brand of disgrace upon his brow, lift up his head once more and turn his face toward the setting sun. Utah beckons him to a new field of pillage and fresh pastures of pilfering. Let him pack his grip-sack and start. The Mormons have no friends and no one will come forward to defend or protect their rights. A returning board, from whose decision there is no appeal, sent out from the American Congress, baptized with the spirit of persecution and intolerance, will enter Utah to trample beneath their feet the rights of the people of that far-off and ill-fated land. Mr. Speaker, I would not place a dog under the dominion of a set of carpet-baggers, reinforced by a returning board, unless I meant to have him robbed of his bone. A more grinding tyranny, a more absolute despotism, was never established over any people."

record in Congress during the past thirty-two years, showing that the Territory had been represented by four delegates; two polygamists and two monogamists.\* He was the only one of them who had been called in question on the score of polygamy. He denied that a union of Church and State existed in Utah, or that he represented any church in Congress. The great majority of the people of the Territory were Mormons, and all their males of good repute over twenty one years of age held office in the Church. It was this and this alone that gave color to the statements that there was a connection between Church and State. The political organizations were entirely distinct from the Church organizations. All the forms of political procedure prevailed in Utah as in other Territories and in the States. He referred to his own experience in Congress, where for nine years he had been "made a target for every man who wished to gain credit for his morality to aim his arrows at." He paid his respects to Governor Murray, the election certificate fraud and the Edmunds law, which had been made retroactive in order to reach his case. He defended plural marriage as a divine institution, and asked: "Why should I stand here and be assailed, abused and denounced as I have been for lechery, because of marrying wives? Was it necessary that wives should be taken to gratify sensuality? I have no need to take any wife to accomplish that." He then showed that the Mormons had sincere religious convictions upon the subject of patriarchal marriage, and were willing to be placed on the same plane with Abraham, in whose "bosom" all good Christians hoped to find eternal rest. Replying to the charge made against the Mormons that they had absorbed all the public lands in Utah, he showed that the large grants made by the Legislature to certain individuals in early days were but temporary, and for the purpose of inducing the grantees to build bridges, construct canyon roads and keep them in repair. This was before the United States land laws were extended over the Territory. To the charge of having once denied, what he

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\*John M. Bernhisel, Judge Kinney, William H. Hooper and George Q. Cannon.

now admitted—that he was a polygamist—Mr. Cannon maintained that he had never denied it, but had declared—in the Maxwell-Cannon contest—that he had never lived with his wives “*in defiance or wilful violation* of the laws of Congress,” or the laws of God, of decency and civilization. He closed as follows:

Mr. Speaker, I find myself in this position: I am here as the Delegate from Utah Territory, regularly elected, properly qualified, fully entitled to the seat. My constituents, as well as myself, believed at the time of my election that there was no barrier to prevent me from taking my seat. Nothing has occurred since my election to interpose any such barrier. All these charges which are made against my constituency, which I have not time to allude to in detail or to disprove, but which I do state are false, all these charges were in existence years and years ago. They were in existence in the Forty-sixth Congress, in the Forty-fifth, in the Forty-fourth, in the Forty-third Congress. I have sat here during these Congresses. My right to my seat has been fully vindicated by the House. I came here under precisely the same circumstances then that I come now. But it is now said that a law of Congress has been enacted which prevents me from taking my seat; that by the operation of this law I am excluded, and the seat is to be declared vacant. If this proposed resolution be sustained, then I say fraud will be supplemented by this method of strangling, of murdering the representation of Utah Territory on this floor.

If the report of the majority of this committee shall be sustained, I shall leave this Hall of Representatives with a feeling and a conscience which will give me far more satisfaction in the days to come than if I were a member of this House and voted in favor of the adoption of the report of the majority declaring this seat vacant. I am a resident of Utah Territory and one of those people who are everywhere spoken against, and against whom many vile charges are made, as were made against their predecessors, the Church of Christ, in the early days, and as Jesus predicted would be the case; yet I do respect my oath, and I pity any gentleman, who, with nothing to sustain him but popular sentiment, is willing to trample upon the Constitution and the law and to strike down a people against whom popular sentiment is strong.

[Here the hammer fell.]

Mr. Speaker and gentlemen of the House, I thank you for your kind indulgence.

Mr. Cannon spoke, as usual, without notes, and with deep feeling. He was listened to with profound attention, some of his auditors being visibly affected, and at the close was warmly applauded and congratulated.

Now came the final action. A vote was first taken upon the following resolution offered by Mr. Moulton, as an amendment to the pending motion of the gentleman from Illinois:

RESOLVED—That George Q. Cannon was duly elected and returned as Delegate from the Territory of Utah, and is entitled to a seat as Delegate in the Forty-seventh Congress.

The amendment was lost—yeas, 79; nays, 123; not voting, 89. The resolutions reported by the majority of the Committee on Elections, denying the right of either Allen G. Campbell or George Q. Cannon to a seat in the House, and declaring vacant the Utah Delegateship, were then read and adopted.




Yours Truly  
J. D. Rawlins



## CHAPTER VII.

1882-1883.

GOVERNOR MURRAY'S CONTROVERSY WITH THE LEGISLATURE—HE VETOES THE UNIVERSITY APPROPRIATION BILL—MORMON CAPITALISTS TO THE RESCUE—GARFIELD COUNTY ORGANIZED—ANOTHER MOVEMENT FOR STATEHOOD—THE CONSTITUTIONAL CONVENTION OF 1882—MORMON AND GENTILE JOINT CELEBRATIONS—PHIL ROBINSON, THE NEW YORK WORLD'S CORRESPONDENT—ARRIVAL OF THE UTAH COMMISSION—THE HOAR AMENDMENT AND GOVERNOR MURRAY'S APPOINTMENTS—A CONTEST BETWEEN APPOINTEES AND INCUMBENTS—THE KIMBALL-RICHARDS CASE—THE GOVERNOR'S ARBITRARY ATTEMPT A FAILURE.

 HE twenty-fifth session of the Utah Legislature, which convened on the 9th of January and adjourned on the 10th of March, 1882, was one of the busiest sessions that body had ever known. It derived its chief consequence from a controversy between Governor Murray and the Council branch of the Assembly, over the appointive power claimed by the former but denied by the latter as pertaining to certain Territorial officers; also from the inauguration of a movement for Statehood, the fourth in the history of the commonwealth.

Just before the Legislature convened, the Governor, who had previously spent several months in the East, working in the interests of the Anti-Mormon cause, again set out for the national capital. He did not go, this time, for the especial purpose of taking part in the election contest which he had precipitated, and which was still pending in Congress. His object now was to save his own official head, over which hung, suspended as by a single hair, the keen-edged guillotine of the Department of Justice. In a word, he had been summoned to Washington to answer the charges, heretofore

mentioned, relating to his alleged "financial irregularities" while United States Marshal of Kentucky.\*

The Governor, before leaving, prepared his message to the Legislature, which was presented by the Acting-Governor at the opening of the session. Aside from some interesting statistics, the document contained nothing of particular note. There was the usual complaint of a union of Church and State in Utah; a suggestion that the Mormon Church should not exact tithing of its members, and a recommendation that the Legislature supplement the Anti-Polygamy Act of Congress by laws in conformity therewith.†

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\* The inquiries into Marshal Murray's alleged misconduct were instituted by Hon. Walter M. Evans. Among the Governor's opponents was also Hon. John D. White, who introduced into the lower branch of Congress the following resolution:

*"Resolved* that the Attorney General be directed to furnish to the House of Representatives a copy of a report made to the Department of Justice by D. K. Chase, general agent of that department, and any other papers and information in his possession on the subject touching the conduct of United States Commissioners, Marshals and other United States officers in the State of Kentucky."

The Chase report was supposed to criminate the ex-Marshal in a fraud upon the Government. It was said that he had tried to induce Chase, who was a Treasury detective, sent to Kentucky for the purpose of examining Murray's accounts as Marshal, to modify his report, but that Chase refused to do so. It was also stated that Murray's friends induced the Department to allow him quietly to resign, and that when he was nominated for Governor of Utah the Chase report curiously disappeared from the Treasury archives. The matter had been almost forgotten when Mr. White introduced his resolution in the House. Governor Murray went to Washington, made a strong fight in his own defense, and succeeded, his friends declared, in vindicating his Kentucky record. At any rate nothing came of the inquiry.

† Among the statistics the Governor called attention to the fact that during 1880 and 1881 there had been organized under the laws of Utah no less than twelve railroad companies, including the since famous Denver and Rio Grande Western, the most formidable local rival of the Union Pacific. The estimated cost of the line to be built by the D. and R. G. W. was \$37,920,000.

The Governor stated that the output of the gold, silver and lead mines of Utah for the period between 1870 and 1881 would fairly average six and a half million dollars yearly. He estimated the product of the Utah manufactories for 1881 at \$5,000,000. Fifty thousand head of cattle, at an average of \$25 per head, and 2,000,000 pounds of wool at twenty cents per pound, had been sold in the Territory that year, while the agricultural reports for 1880, which were admitted to be imperfect, showed an aggregate acreage for



The Mormon law-makers could not but think that if the Governor wished to exemplify as well as teach the principle of non-interference by the Church with the affairs of the State, and *vice versa*, he would have done well to withhold his suggestions as to the manner in which the Mormon Church should collect tithing of its members. With that matter the legislators had nothing whatever to do, and the Governor—to use a Hibernianism—still less. These portions of the message were made the subject of a caustic reply by a special committee of the Legislature to whom the document was referred.

The Governor, having returned from the East, gave a reception, on the 2nd of February, to the members of the Legislature and other public officials. All the guests were treated with warm courtesy. Among them was General A. McDowell McCook, who, in July of the previous year, had succeeded General John E. Smith as commander at Fort Douglas; the latter having been placed on the retired list of army officers.

The chief bone of contention between the Governor and the Legislature, and the cause of the controversy previously mentioned, was a question involving the meaning and scope of Section Seven of the Organic Act of the Territory, which provides as follows:

That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such a manner as shall be provided by the Governor and Legislative Assembly of the Territory of Utah. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for; and in the first instance the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly, and shall lay off the necessary districts for members of the Council and House of Representatives, and all other offices.

Among the officers “not otherwise provided for” were those of Territorial Auditor and Territorial Treasurer; and from the first it had been a question as to whether or not these were intended to be

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1879 of 116,498, producing 11,691.99 bushels of wheat, 9,605 bushels of rye, 498,082 bushels of oats, 163,342 bushels of corn, and 217,140 bushels of barley.

included in the omnibus clause giving the Governor and Legislative Council the appointive power referred to in the section cited. At an early period in the history of the Territory the Legislature had provided that the officers named and some others should be elected by the joint vote of the Legislative Assembly. Governor Harding, in his message to that body, December 8, 1862, used this language in relation to the matter :

I cannot arrive at any other conclusion in the examination of that act [the Organic Act] than that the officers not included in the first class [township, district and county officers] must be appointed by the Governor by and with the advice and consent of the Legislative Council, and cannot be elected by joint ballot of the Legislative Assembly.

The legislators, however, held a different view, and feeling that where a doubt existed in relation to such things, the people and not the "one-man power" should have the benefit of it, they, as the people's representatives, continued to choose the officers of the class to which the Auditor and Treasurer belonged. This remained the custom until 1878, when the Legislature passed a measure, which was approved by Governor Emery, making those offices elective by the people.

Governor Murray's views upon the subject were expressed in the following communication to the presiding officer of the upper house of the Legislature :

TERRITORY OF UTAH, EXECUTIVE OFFICE,  
SALT LAKE CITY, March 9, 1882.

*Hon. Joseph F. Smith, President of the Council:*

Section seven of the Act of Congress providing for a territorial government for Utah, provides that all township, district and county officers, not otherwise provided for by the Organic Act, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory. Under this provision the Governor and Legislative Assembly properly provided for the election and appointment of all county, district and precinct officers, and these officers are now exercising *de jure* the functions of their respective offices. As to all other officers of the Territory, not otherwise provided for in the Organic Act, it is made the duty of the Governor to nominate, and by and with the advice of the Council, to appoint the same. This duty is imposed upon the Governor and the Council : "The Governor *shall nominate* and by and with the advice and consent of the Legislative Council, appoint." Such officers must necessarily be named in the manner designated by Congress. Their election and

appointment, in any other manner, under an act of the Legislative power of the Territory, which derives its power from the provisions of the self-same law, is nullification. This power was exercised by Honorable Brigham Young, the first Governor of the Territory, for many years. With few exceptions, this part of the provisions of the Organic Act has been avoided and disregarded and such officers have been elected and appointed in other and different ways than that specifically prescribed by act of Congress. In obedience with this law, and in unison with the decision of the Supreme Court of the Territory, imposing this duty in part upon the Executive, I have the honor and do hereby nominate, and by your advice and consent will appoint to the offices for which they are hereby named, and for the terms prescribed by law, the following named persons, *to-wit*:

Commissioners to Locate University Lands—Presley Denney, H. W. Haight.

Territorial Auditor—George C. Douglass.

Treasurer—D. F. Nicholson.

Superintendent of Schools—J. F. Bradley.

Librarian—C. Diehl.

Sealer of Weights and Measures—C. Popper.

Recorder of Marks and Brands—C. Popper.

Surveyor-General—Edmund Wilkes.

Chancellor of Deseret University—James Sharp.

Regents—John T. Caine, Feramorz Little, William Jennings, W. H. Hooper, Thomas Marshall, J. M. Coyner, Edward Benner, G. D. B. Miller, J. R. Walker, L. P. Higbee, T. B. Hilton, Le Grand Young.

Treasurer—B. G. Raybould.

Very Respectfully,

ELI H. MURRAY,

Governor Utah Territory.

The Council, after hearing the Governor's communication, adopted a preamble and resolutions, the following portions of which sufficiently present their side of the question:

*Whereas*, by section 586 of the Compiled Laws of Utah, provision is made for the election, by the people, of the Commissioners to locate University lands, and said officers having been so elected continuously, there exists no vacancy in said offices, and

*Whereas*, by section 4, chapter 9, session laws of 1878, the offices of Territorial Treasurer and Auditor of Public Accounts were made elective by the people and such officers having been so elected continuously, there is now no vacancy in said offices, and

*Whereas*, by section 602 of the Compiled Laws of Utah, the office of Territorial Superintendent of District Schools was made elective by the people, and having been so elected continuously, there exists no vacancy in said office, and

*Whereas*, section 127 of the Compiled Laws, approved March 6, 1852, provides that a Librarian shall be elected by a joint vote of the Legislative Assembly, and said officer having been continuously so elected there now exists no vacancy, and

*Whereas*, by section 80 of the Compiled Laws approved January 13, 1866, it is provided that the Recorder of Marks and Brands shall be elected by the Legislative Assembly, and said officer having been so elected continuously, there is no vacancy, and

*Whereas*, by section 71 of the Compiled Laws, approved January 14, 1857, it is provided that there shall be elected by the joint vote of the Legislative Assembly a Sealer of Weights and Measures, and said officer having been so elected continuously, there is now no vacancy existing in said office, and

*Whereas*, by section 63 of the Compiled Laws, approved March 2, 1850, it is provided that a Surveyor-General shall be elected by the General Assembly, and such officer having been so continuously elected, no vacancy exists in said office, and

*Whereas*, by section 574 of the Compiled Laws of Utah, approved February 28, 1850, it was provided that a Chancellor and twelve Regents shall be chosen by the joint vote of both houses of the General Assembly; and said officers having been so elected continuously, there exist no vacancies in said offices, and

*Whereas*, said laws have been submitted to Congress, and not having been disapproved by that body, are therefore in full force and effect, and

*Whereas*, the several Executives of the Territory who approved said acts, by so approving, waived and relinquished any right which they may have previously possessed to nominate the officers aforesaid: Now, therefore

*Be it Resolved*, by the Council of the Legislative Assembly of the Territory of Utah, that the complaint of His Excellency, the Governor, is groundless, and his nominations unnecessary, and that no action thereon is required.

The Governor's resentment at this refusal to place the desired patronage at his disposal, expressed itself in the veto of a very important measure which immediately came before him. It was a bill appropriating money for the University of Deseret. That institution, chartered as early as February, 1850, after a lapse of thirty-two years, was still without "a place to lay its head." Some of its trials and vicissitudes, before and after its revival in 1867-8, have been recounted. After occupying for several years the "Council House," in Salt Lake City—a building since destroyed by fire—the University had taken up its abode in a time-honored, weather-beaten structure formerly known as the Union Academy, latterly as the Deseret Hospital. Near by was a vacant but valuable square containing ten acres of cultivated ground, belonging to Salt Lake City, and designed originally for a public park. This piece of land, called "Union Square," had been bestowed by the City authorities upon the University, and the Legislature had supplemented the munificent

gift by a liberal appropriation toward the erection of a suitable building upon the pleasant site. The edifice, begun late in 1881, was advancing rapidly to completion, and the Chancellor and Regents, in the prospect of an additional appropriation by the Legislature to the University, were congratulating themselves upon the fair outlook before the institution, when their hopes were dashed to earth by the angry act of the Governor.

Fifty-five thousand dollars was the amount needed and proposed for the University in 1882: of which forty thousand dollars was to complete the edifice, and fifteen thousand dollars to pay the usual running expenses of the institution and the tuition of eighty normal students, prospective teachers in the district schools of the Territory. The veto of the bill to appropriate these sums was regarded by most of the students, past and present, as a cruel blow at their struggling Alma Mater, just beginning, after so long a period of poverty, to lift its head above the waves of financial distress which had more than once threatened to drown it utterly. It was a blow, however, that rebounded, and in the end counted more to the discomfiture of the official who gave it than to the detriment of the object at which it was aimed. Public-spirited Mormon citizens came to the relief of the University and rescued it from impending ruin by advancing money for the prosecution of the work upon its unfinished walls.\* A subsequent appropriation reimbursed them, but it was not until six years had passed, and Governor Murray had been removed from office for just such an act as that by which he sought to cripple if not destroy the University.

During the legislative session of 1882 a law was enacted establishing at Provo, Utah County, an Asylum for the Insane, and appro-

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\* On the 11th of May, 1883, at a meeting of the Chancellor and Board of Regents of the University, a resolution was adopted authorizing the opening of a subscription loan on the following terms: the loan to draw the legal interest, ten per cent, but each party thereto to become responsible for the amount subscribed by him in case of a failure on the part of the Legislature to refund by appropriation. The original subscribers and the amounts of their subscriptions, that day, were as follows:

priating the sum of twenty thousand dollars toward the erection of its buildings. The act creating this institution made the Governor of the Territory *ex officio* chairman of its board of directors. The Governor approved this measure without hesitation.

An act organizing Garfield County out of a portion of Iron County was passed at the same session. The Legislative Assembly desired to name the new county after the veteran pioneer and colonizer, Erastus Snow, who had done more than anyone else, Brigham Young excepted, for the development of Southern Utah and adjacent parts. Governor Murray, though not averse to the proposed title, suggested that the county be called Garfield, after the murdered and lamented President. The members, nothing loth, made the desired change in the bill, which then received executive approval. The first to support the Governor's suggestion substituting Garfield County for Snow County, was the Hon. Erastus Snow, then a member of the Council.

Late in February the Legislature had taken steps in the movement for Statehood, referred to at the opening of this chapter.

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William Jennings	-	-	-	-	-	\$1,000
Sharp and Sons	-	-	-	-	-	1,000
Feramorz Little	-	-	-	-	-	1,000
Trustee in Trust of the Church of Jesus Christ of Latter-day Saints						5,000
George Q. Cannon	-	-	-	-	-	750
Horace S. Eldredge	-	-	-	-	-	1,000
Robert T. Burton	-	-	-	-	-	500
Joseph F. Smith	-	-	-	-	-	300
Henry Dinwoodey	-	-	-	-	-	1,000
John T. Caine	-	-	-	-	-	300
John R. Park	-	-	-	-	-	250
Total,						\$12,100.

In July, 1884, the subscriptions reached the sum of \$24,991.70, which indebtedness was discharged in February, 1888; the Legislature having appropriated money for that purpose. An effort was made in 1884 to obtain an appropriation, but, though the Assembly did its part, Governor Murray again thwarted the will of the people's representatives by vetoing the proposed enactment. It was his successor, Governor Caleb W. West, who signed the appropriation bill of 1888.

Hon. Daniel H. Wells took the initiative, making the matter the subject of a resolution presented by him in the Council branch of the Assembly. A subsequent set of resolutions, adopted by both houses, authorized the people at large to meet in their respective precincts to consider the proposition of Utah's application for admission into the Union, and select delegates to conventions to be held in all the counties of the Territory for the purpose of appointing delegates to a general Convention to meet at Salt Lake City on Monday the 10th of April. The object of the latter gathering was to frame a State Constitution. Following is a list of the counties and the number of delegates each was authorized to send to the Constitutional Convention:

Beaver	-	-	2	Rich	-	-	1
Box Elder	-	-	3	Salt Lake	-	-	15
Cache	-	-	6	Sanpete	-	-	5
Davis	-	-	3	Sevier	-	-	3
Emery	-	-	1	Summit	-	-	3
Iron and San Juan	-	-	3	Tooele	-	-	2
Juab	-	-	2	Utah	-	-	8
Kane	-	-	2	Wasatch and Uintah	-	-	2
Millard	-	-	2	Washington	-	-	2
Morgan	-	-	1	Weber	-	-	5
Piute	-	-	1				
				Total,			72

The Convention met at the time and place appointed and organized by electing the following named officers: President, Joseph F. Smith; vice-presidents, L. E. Harrington and Edward Dalton; secretary, Arthur Stayner; assistant secretaries, Junius F. Wells, Elmina S. Taylor and Lyman R. Martineau; chaplain, W. W. Cluff; sergeant at arms, B. Y. Hampton; messenger, Milando Pratt.

The general complexion of the assemblage is indicated by the names composing the Salt Lake County delegation. They were Daniel H. Wells, Joseph F. Smith, John T. Caine, Charles W. Penrose, Le Grande Young, Robert Harkness,\* Ben Sheeks,\* Joseph L. Rawlins,\* John R. Winder, James Crane, William W. Riter, Hosea

\* Non-Mormons, prominent lawyers of Salt Lake City.

Stout, Emmeline B. Wells, Sarah M. Kimball and Elizabeth Howard. On the opening day a communication was received from Mr. Harkness stating that it would be impossible for him to attend, whereupon the name of James Sharp, an alternate delegate, was enrolled in his stead.

Regular meetings were held by the Convention until the 27th of April, when the completed "Constitution of the State of Utah," was adopted by a unanimous vote.

One day before, a discussion had arisen over the title of the proposed State, a motion being made by Mr. Thoreson, of Cache County, to substitute the words "State of Deseret" for the words "State of Utah," wherever the latter appeared in the Constitution.

Mr. Hatch, of Wasatch, objected to the amendment. Said he: "We are known throughout the world as Utah, and the expense would be great in making necessary changes for legal purposes."

Mr. Penrose, of Salt Lake, favored the amendment. He was not proud of the name Utah, it being derived from a degraded band of Indians. Deseret was euphonious, signified a honey-bee, and was redolent of blossoms and flowers.

Mr. Stout, of Salt Lake, said: "We started out with the name Deseret for our original organization. Congress has refused us that name, and it seems that we want them to take water."

Mr. Caine, of Salt Lake: "We have tried three times to get admission as a State under the name of Deseret, and have failed. I want to try the name of Utah. Deseret may be a sweet name, but it has a sting."

Mr. Mack, of Cache County, was also in favor of the name Utah.

Mr. Baty, of Box Elder County, stated that he first learned to love the name Utah from the words of a hymn composed by Mr. Penrose, and he loved it still.

Mr. Tanner, of Weber, likewise favored Utah. "People can honor a name," said he, "though a name cannot honor a people."

The motion to change the name was lost, and as the "Constitu-



tion of the State of Utah," the instrument framed by the Convention was adopted.

Messrs. Daniel H. Wells, John T. Caine, Franklin S. Richards, Charles W. Penrose and John R. Winder were appointed a Committee on Memorial, and were authorized to act as an advisory committee until after the ratification of the Constitution. The Convention then adjourned until the 6th of June.

On the 22nd of May the Constitution was submitted to the people for their votes and ratified by an overwhelming majority of the citizens: there being 27,814 ballots cast for it, and only 498 against it.

The Convention, reassembling in June, adopted the memorial which by that time had been prepared, and was to accompany the Constitution to Washington. The document was modest and temperate in tone. It referred briefly to Utah's past history and present status—without, however, mentioning the subject of polygamy—and closed thus:

"We think it will be conceded that it [the Constitution] provides for the State of Utah a republican form of government; and we urge that this being guaranteed beyond dispute, the constitutional requirement is complied with, and nothing stands lawfully in the way forbidding Congress to authorize the admission of Utah into the Union.

"In conclusion we respectfully suggest that by granting what we believe to be our rights under the Constitution and the treaty made with Mexico, benefits will accrue not only to the new State but to the nation at large, in the settlement of questions that have frequently produced great and unprofitable agitation; in the addition of one more vigorous and promising commonwealth to the Federal Union; and in the security which will be the consequence to every interest in this important section of country that is calculated to add to the wealth, power and perpetuity of the glorious Republic in which we desire to become incorporated."

Seven delegates—William H. Hooper, John T. Caine, James Sharp and William W. Riter, of Salt Lake County; Franklin S. Richards and David H. Peery, of Weber County, and William D. Johnson, Jr., of Kane County—were chosen to present the Memorial and the Constitution to Congress. That duty was promptly performed, and the documents were duly laid before the Senate and House of Representatives, and referred to the appropriate committees. The Convention

and its committee continued their labors, and eventually a bill for Utah's admission was introduced into Congress. Nothing more was accomplished, however, in the direction of obtaining Statehood.

The acerbities of the local situation were softened sufficiently during the summer of 1882 to admit of two interesting events in which Mormons and Gentiles jointly participated. The first was the formal opening of Liberty Park, in the southern suburb of Salt Lake City, on June 17th, the anniversary of the Battle of Bunker Hill. The second was the celebration of Independence Day at the same place.

The opening of the Park, as previously stated, had been set originally for July 4th, 1881; but was postponed owing to the assassination of President Garfield. Nothing occurred this time either to postpone or to mar the ceremonies. The orator of the day was Hon. T. B. Lewis. Speeches were also made by Mr. Ben Sheeks, Governor Murray, Hon. D. H. Wells, General McCook, Apostle Wilford Woodruff and Mayor William Jennings.

At the Independence Day celebration Governor Murray was president of the day, Professor Lewis read the Declaration of Independence, Mrs. Careless sang the "Star Spangled Banner," Judge Goodwin read an original poem, Judge Van Zile delivered the oration of the day, and speeches were made by S. J. Jonasson, Arthur Stayner, J. L. Rawlins, General McCook, O. J. Hollister, R. W. Sloan, G. G. Bywater and J. M. Benedict. Croxall's Band, the Fort Douglas Band and the Union Glee Club enlivened the occasion with inspiring strains. The opening prayer was offered by the Rev. R. G. McNiece, and benediction was pronounced by Elder George G. Bywater.

Among the noted visitors to Utah that year was Mr. Phil Robinson, a gentleman who had achieved wide repute as war correspondent of the London *Daily Telegraph*. He was the author of several books descriptive of his travels and observations in various parts of the world. Coming to New York on business connected with the publication of an American edition of one of his books, he met Mr. William H. Hurlbert, proprietor of the New York *World*, and was

commissioned by him to proceed westward and inquire into the Mormon and Chinese questions—the former in Utah, the latter in California—and give his views thereon to the readers of that journal. Mr. Robinson, on reaching Utah, elected to remain here for several months, Salt Lake City and the Territory generally possessing for him many attractions. He traversed the whole region, from Bear Lake in the north to Long Valley in the south, visiting the various towns and settlements, mingling with the people in public and private, and studying with the keen eye of an experienced traveler and sociologist “the Mormon problem.” The result, in his letters to the *World*, was the fairest and most favorable setting forth of the subject that has emanated from a non-Mormon pen. His style was simple, yet fascinating, and his correspondence from Utah created a sensation all over the country. Mr. Robinson,—whom the author met in London during the winter of 1882-3,—returned to Utah in February of the latter year and delivered a course of lectures. He was then accompanied by Sergeant Ballantyne, the celebrated English barrister. In the interim of his two visits to these parts, Mr. Robinson published his interesting book, “Sinners and Saints,” containing the narrative of his travels to and within this Territory.

The summer of 1882 also witnessed the arrival in Utah of the five Commissioners provided for in the Edmunds Act and recently appointed by the President of the United States. The personnel of this board of officials, henceforth to be known as the Utah Commission, was as follows: Alexander Ramsey of Minnesota; Algernon S. Paddock of Nebraska; George L. Godfrey of Iowa; Ambrose B. Carlton of Indiana; and James R. Pettigrew of Arkansas. They received their appointments on the 16th of June and reached Salt Lake City on the 18th of August. The day after their arrival they held a meeting at their rooms in the Continental Hotel, and deliberated upon the important duties that had been assigned them. Those duties, as defined in the Act creating the Commission, were:

First—To appoint officers to perform each and every duty relating to the registration of voters, the conduct of elections, the

receiving or rejection of votes, the canvassing and returning of the same and the issuing of certificates or other evidence of election.

Second—To canvass the returns of all the votes cast at elections for members of the Legislature, and issue certificates of election to those persons who, being eligible for such election, should appear to have been lawfully elected.

Third—To continue in office until the Legislative Assembly, so elected and qualified, should make provision for filling the offices vacated by the Edmunds Act, as therein authorized.

The failure of the Commissioners to arrive upon the scene of their labors at an earlier day had given rise to a complication which resulted in another Congressional enactment relating to Utah. We refer to the celebrated "Hoar Amendment."

It was the 2nd of August, and the Senate of the United States was in committee of the whole, considering the sundry civil appropriation bill, when Mr. Hoar, of Massachusetts, moved to insert in that measure the following amendment:

The Governor of the Territory of Utah is hereby authorized to appoint officers in the said Territory to fill vacancies which may be caused by a failure to elect on the first Monday in August, 1882, in consequence of the provisions of an act [the Edmunds Law] entitled "An act to amend section 5,352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," approved March 22, 1882; to hold their offices until their successors are elected and qualified under the provisions of said act.

Senator Hoar, in order to show the necessity for such an amendment, caused to be read the following letter from the Federal Judges of Utah:

The undersigned judges of the Supreme Court of the Territory of Utah respectfully represent:

That the Edmunds bill—so called—vacates all registration and election offices in Utah; that by reason of this no registration of voters has been made in this Territory this year, which the local law requires to be done in May,\* and revised the first week in June, and

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\* The language of the statute was "before the first Monday in June." This requirement only applied to the first registration after the passage of the registration law in February, 1878. After that a revision of the registration lists "during the week commencing the first Monday in June of each year" was all that was necessary.

none but registered voters can vote ; that by reason of such failure of registration and lack of election officers. the election fixed for the first Monday in August, 1882, cannot be held ; that at such election there would have been chosen successors to all the present county officers, and also the Territorial auditor and treasurer, as directed by Territorial statute ; that those successors cannot now be chosen for the reasons given ; that this failure to elect is liable to cause general disturbance and trouble, especially in view of the well known fact that many of the present incumbents are understood to be polygamists, and so disqualified, under the law above referred to, to hold office. We therefore ask that Congress shall take such measures as will provide for legal successors to all the present incumbents of office whose successors would have been chosen at the August election, and thereby secure the continuance of good order, and the regular and undisputed support of organized government, which otherwise would be seriously jeopardized.

We have delayed this representation as long as possible, hoping for the advent of the election commissioners, but they have not yet come.

Dated July 20, 1882.

JOHN A. HUNTER, Chief Justice,  
 PHILIP H. EMERSON, Associate Justice,  
 STEPHEN P. TWISS, Associate Justice,  
 Supreme Court of Utah.

The amendment, which Mr. Hoar stated had been prepared by Senator Bayard of Delaware, Senator Lapham of New York, and himself, being agreed to, was reported to the Senate.

It provoked some discussion, Senator Brown of Georgia being its chief opponent. He did not see the necessity for it, and strongly objected to giving to the Governor of Utah the power to fill offices which the law made elective by the people. To the argument of Messrs. Hoar, Bayard and others, that the amendment was necessary to prevent a state of anarchy in this Territory, which they said might ensue if no successors were provided for the officers whose terms were about to expire, Mr. Brown suggested that it was the usual provision in States, and he supposed in Territories, where no election was held to fill an office, that the incumbent remained therein until his successor was elected and qualified, and he asked why this could not be done in Utah.

He was answered, that most of the present officers in this Territory were polygamists, and that the Edmunds Law provided that no polygamist should continue to hold office.

“How do you ascertain that a man is a polygamist?” inquired the irrepressible Georgian.

The question was evaded by Mr. Hoar, who merely remarked that the Judges of the Territory were unanimous in sending the epistle which had been read.

Senator Brown insisted upon an amendment to the amendment limiting the terms of the officers to be appointed by the Governor to eight months. This was agreed to, and the measure known as "the Hoar Amendment" then passed the Senate.

Two days later it was considered and concurred in by the House, a conference committee of the House and Senate having passed upon it previously. Mr. Converse of Ohio saw eye to eye with Senator Brown upon the proposition to place so much power in the hands of the Governor of Utah, and offered an amendment providing that his right to appoint should not apply to any officers who had not been guilty of polygamy, where under the laws of the Territory they could hold their offices until their successors were elected and qualified.

He was partly sustained by Mr. Blackburn, of Kentucky, a friend to Governor Murray, who stated that he had suggested just such an amendment while the matter was before the conference committee, where he was assured by every other member of that committee that the change would be entirely superfluous. They had given him to understand that the law would be construed to protect the rights of the people of Utah and prevent all unfairness and fraud; that no officers would be ousted whose places had not been lawfully vacated, and that existing law in the Territory would be enforced under the new enactment. With this understanding he favored the Senate amendment as a whole, though he would have preferred the modification that he proposed and which the committee had seen fit to reject.

Mr. Converse insisted upon his amendment, which, however, shared the fate of the one offered in committee by Mr. Blackburn, and the Hoar Amendment was rushed through the House in much the same manner as the Edmunds Bill had been, a few months before.

Mr. Converse, after the measure had passed, thus pithily "spoke his mind" in relation to it:

Mr. Speaker, when the subject of appointing a board of commissioners for the Territory of Utah was before the House for consideration, I made a statement that one of the purposes in contemplation was to place the treasury of that Territory in the hands of a returning board. I did not then see the means by which that was to be accomplished, but under this Senate amendment to the sundry civil appropriation bill it is evident that you put out of office the officers elected by the people of that Territory. The officials of that Territory elected by the people there, have ever since the organization of the Territory, proved themselves to be honest in the administration of all monetary affairs connected with it. There have been no defalcations, frauds, or extravagance, and no charges of the misapplication of the people's money.

By this amendment you take the entire control out of their hands and place it in the hands of a Governor appointed by the President of the United States. There is no requirement of law as to the qualifications of the Treasurer whom he shall appoint. There is no requirement as to the bonds which shall be taken for the protection of the treasury. There is no requirement of law as to the appointment of the accounting officer called the Auditor of public accounts, so that practically, under this amendment, you place, as I have said, in the hands of Governor Murray, not only the treasury of the Territory and the collection of all taxes, but you authorize him as well to appoint an Auditor of accounts, the only auditing officer known under the laws of Utah Territory. By this provision, it seems to me that you have bound that Territory hand and foot, and given it over to carpet-bag governors and returning boards to rob, as the Southern States have been robbed by the same class of officers within the last few years.

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The letter of certain Federal officers in Utah, published in the Senate proceedings the other day, shows that the object of asking this appointing power to be conferred upon Governor Murray is to reach the offices of Territorial Treasurer and Auditor of Public Accounts. Those offices are named in the letter. \* \* \* There could have been no objection to passing an amendment to the Senate amendment extending the term of office of the present Treasurer and Auditor of Public Accounts, who were elected by the people, and are citizens and residents of the Territory, provided they were not and are not bigamists or polygamists.\* That amendment has been refused, but without debate, without opportunity for amendment; without apology a law has been enacted by an amendment on an appropriation bill depriving the people of the Territory of the officers elected by themselves and providing for the appointment in their stead of men selected by a Governor not elected by themselves, by a non-resident Governor who has no interest in them, and has no interest in the Territory. \* \* \* Whether he selects residents or not, they may be his mere tools, without character and without the

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\* The office of Territorial Auditor was held at this time by Nephi W. Clayton, and the office of Territorial Treasurer by James Jack. Both had been elected in 1879. These gentlemen were Mormons, but monogamists, never having practiced polygamy.

confidence of the people mostly interested. There is no appeal from or review of his decision.

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I do not desire to say anything against the Governor of Utah himself; but if the gentleman from Kentucky, [Mr. Blackburn] who passed a high encomium upon his character, will examine the files and papers in the office of the Bureau of Justice in this city, he will find an examination, made by the last Administration, of Mr. Murray's proceedings as Marshal of Kentucky, which I think would induce him to modify his opinion. The Governor's recent performance certifying that a man was elected Delegate to Congress who received only 1,300 votes while his opponent received 18,000 votes, is not calculated to inspire confidence in either his judgment or his probity. But without regard to him, such power ought never to be taken from the people and placed in the hands of any one man. Neither ought he to be subjected to any such temptation.

In reply to this speech, Mr. Hiscock, the principal supporter in the House of the measure criticised by the gentleman from Ohio, stated that the same restrictions then in force upon the Territorial officers elected by the people would be placed around the Governor's appointees.

"I am willing my judgment should be tested by what shall take place in that Territory in the next ten or twelve months," retorted Mr. Converse.

The bill containing the Hoar Amendment was duly signed by the President and became law.

The Governor of Utah was now clothed—or supposed himself clothed—by act of Congress, with the very power which he had previously sought, and the refusal to grant which, on the part of the Territorial Legislature, had caused the main contention between him and that body. That the three Judges, in writing the letter which had induced Congress to legislate for the relief of the alleged distressful situation, purposely played into the hands of the Governor and his friends, we shall not presume to say. Their expressed apprehension that general disturbance and trouble would result if Congress did not take the action that they suggested, was quite at variance with the opinion of the great majority of the people. In fact, to them such fears were utterly groundless; there was not the slightest necessity for Congressional interference, and the Hoar Amendment



was a superfluous and useless piece of legislation. This view was taken by the Mormons at the very beginning, and, as shown, it was entertained by such able and astute statesmen as Senator Brown, of Georgia, and Representative Converse, of Ohio.

Now that the measure was in force, however, the Mormons were satisfied to abide the results of its operations, insisting only that it be construed and executed according to the expressed intent of its framers. It was not intended to create vacancies, but merely to provide for the filling of such vacancies as might be caused through a failure to hold the August election. If there were any officers whose terms had expired, or were about to expire, and the local law made no provision for them to "hold over"—to continue in office till their successors were elected and qualified—they should prepare to step down and out and give place to the Governor's appointees. If, on the other hand, the terms for which they were elected had not expired, and were not about to expire; or even if they were, and the incumbents had been commissioned to continue in office till their successors were elected and qualified, then they should remain; such as were "understood to be polygamists" should be proved to be polygamists before being ousted, and even a polygamist who had been elected and commissioned to serve under the "hold over" provision, was not obliged to summarily vacate his office at the dictum of the Territorial executive. Such was the Mormon attitude on the question.

The position assumed by Governor Murray and his friends was that the Edmunds Law and the Hoar Amendment were to be construed together, and that in construing and applying them it should be borne in mind that the object of all such legislation was the suppression of polygamy. They contended that every office held by a polygamist was vacant from the moment the Edmunds Bill became law, and that by the terms of the Hoar Amendment the Governor was empowered to fill all such vacancies by appointment; moreover, that every office in the Territory, whether held by a polygamist or a monogamist, the election for which should have taken place in

August, 1882, was vacant from and after that time, regardless of all "hold-over" provisions in the local statutes, and that it was the Governor's right to appoint and commission new incumbents for the places. Some went so far as to assert that every member of the Mormon Church was a polygamist; this proposition being bolstered up by a definition of the term polygamist given in some dictionaries, to-wit: "one who practices polygamy or maintains its lawfulness." Hence, they argued that no Mormon had the right to hold office or vote.

It might be thought that Governor Murray, having read the Senate and House debates upon the Hoar Amendment, would have taken as a lantern for his feet and a light to his path the plain intent of that measure, as expressed by its friends and advocates; that he would have sought to vindicate himself from the reflections cast upon him during those debates. But no; that would have been too tame and temperate a proceeding. To act only according to law was never characteristic of such free and unfettered spirits as Eli H. Murray and his coterie. Laws were made for Mormons to obey, and if they did not obey them, even when in conflict with their religious principles, they were aliens and traitors, unfit to hold office, to vote, or exercise any privilege of American citizenship. Those who made war upon the Mormons,—it mattered not what they did; justice was blind to their transgressions, especially if the end they sought was similar to that which the Governor of Utah now strove to attain. Like Lysander of old, he knew how to eke out the lion's skin with the fox's. Where the law fell short, he added to the law, or went beyond it; stretching it as far as desirable. What he was capable of in this direction was shown in the matter of the Campbell election certificate. His course was much the same, now that he had been given the power to make certain official appointments—authorized to fill such vacancies as "might be caused" by the failure to hold the August election; he straightway endeavored to create vacancies by wholesale.

In three proclamations, dated respectively September 16th, September 27th and October 20th, 1882, the Governor appointed to office

in the various counties of Utah nearly two hundred persons, nearly all non-Mormons. Not only did he seek to vacate every county and Territorial office, the terms of whose incumbents, except for the "hold over" provision, expired in August, 1882, but even to supersede by appointment officers whose regular terms would not expire until August, 1884. In a few instances, at places where there were no eligible non-Mormons, he reappointed the Mormons then in office. In one case—laughable to relate, after his refusal of the election certificate to Delegate Cannon, on the ground that he was an alien—the Governor actually selected for sheriff of one of the counties a man who was not a citizen of the United States. This was doubtless an inadvertence; but the incident serves to show how little acquainted he was with the persons to whom he was distributing with so prodigal a hand the offices and honors that were rightfully in the gift of the people. It is but fair to state that the alien appointee for sheriff—a citizen of Parowan—hastened to Beaver in the adjoining county and took out his naturalization papers immediately on being informed of the greatness so suddenly thrust upon him.

Not so anxious for distinction—of the kind the Governor was conferring—was the writer of the following letter, also a resident of Parowan:

*Editor Deseret News:*

I see by the Salt Lake papers that I have been appointed by the Governor to fill the office of Probate Judge of Iron County. As I am not at present a candidate for office, I take this means to notify the people of this county that I have declined to accept the office.

My name was sent to Salt Lake without my knowledge or consent. I am not a Mormon, and this is probably the reason why I was so honored; but I could not feel right if I allowed myself to be placed in an official position where I could not have the hearty support of the majority of the community.

I think that all officers should be elected by the people, from the Governor down, so I could not consistently accept an appointment to any office.

L. S. LYMAN.

PAROWAN, October 4, 1882.

The Mormons in office throughout the Territory resolved almost to a man to ignore the Governor's appointments, and dispute to the last legal extremity what they considered his autocratic use and

abuse of the "one man power." The Executive and his friends were equally determined. Three days after the issuance of his first proclamation respecting the offices, four of his appointees, namely, U. J. Wenner, William Nelson, Arthur Pratt and Samuel Kahn, named respectively for Probate Judge, Clerk, Sheriff and Selectman of Salt Lake County, proceeded to the County Court House and offered to file their official bonds; the first-named with Treasurer James W. Cummings and the others with Judge Elias Smith. Mr. Cummings stated that he already had the bonds of the Probate Judge and he declined to recognize Mr. Wenner in that capacity. Judge Smith took the matters presented to him under advisement. Three days later Messrs. Pratt and Wenner, presenting at the Court House their commissions from the Governor, demanded to be installed. Their demands were not complied with. Subsequently Jacob S. Boreman, James F. Bradley, Bolivar Roberts and David F. Nicholson, gubernatorial appointees to the offices of Prosecuting Attorney, Assessor, Collector, and Coroner of Salt Lake County, and Dr. George C. Douglas, the would-be Territorial Auditor, took similar action with the like result. Major Edmund Wilkes, appointed County Surveyor, had previously met with the same kind of a rebuff.

The matter now went into the courts. The first cases docketed in the Third Judicial District were those against the Territorial Auditor, Nephi W. Clayton, and the Salt Lake County Sheriff, Theodore McKean. Peremptory writs of mandate to compel them to vacate their offices in favor of the Governor's appointees, were applied for by the latter. Alternative writs were granted by the District Court, and the case came on for hearing. Both cases were argued together; or rather, it was arranged that the issue in the case of Douglas *vs.* Clayton should also decide the Pratt-McKean controversy. The plaintiffs, or relators, were represented by Sutherland and McBride, Marshall and Royle, Dickson and Varian and others; the defendants, or respondents, by Sheeks and Rawlins, Harkness and Kirkpatrick, Rosborough and Merritt, Arthur Brown and others.

Mr. Rawlins opened the case for the respondents. He pre-

sented the commission of Nephi W. Clayton as Territorial Auditor, given him by Governor Murray on the 27th of November, 1880, wherein he was authorized to hold that office for the term prescribed by law, and until his successor should be elected and qualified. The defendant claimed that his term of office—two years—would not expire until November 27th, it was now the 11th of October—and he prayed judgment that the case be dismissed with costs. The defense also interposed a demurrer to the affidavit upon which the alternative writ had been issued, the grounds of which were:

1—That the court had no jurisdiction to hear or determine the subject matter in controversy on proceedings for a writ of mandate.

2—That proceedings for a writ of mandate were not a lawful method of trying defendant's title to the office in question.

3—That neither the affidavit of relator nor the alternative writ herein, stated facts sufficient to constitute a cause of action.

The case was ably argued by Messrs. Rawlins, Marshall, Dickson and Merritt, and taken under advisement by the court. A decision was rendered by Judge Hunter on the 30th of October. He sustained the demurrer of the defense and denied the writs applied for by the plaintiffs. One of the grounds of the ruling was that there was nothing in the pleadings to show that the applicants—Messrs. Douglas and Pratt—had filed their bonds or taken the oath of office as Auditor and Sheriff, as required by law. The attorneys for those gentlemen took time to consider whether to amend their application or appeal from the decision.

Simultaneously with the planting of these suits, one involving the same principle had been begun in the First District Court at Ogden.\* The plaintiff was James N. Kimball, who had been appointed by Governor Murray Probate Judge of Weber County. The defendant was Franklin D. Richards, the incumbent of that office, which had been held by him for several consecutive terms.

On the 2nd of October Mr. Kimball demanded of the incumbent

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\*At this time Ogden shared with Provo the distinction of being the seat of the First District Court, the Judge of which held sessions at both places alternately.

the office, and on its being refused, applied to the District Court for a peremptory writ of mandate to compel Judge Richards to vacate. Judge Emerson granted an alternative writ and the 10th of October was the date set for the hearing. The defendant was represented by the Ogden law firm of Richards and Williams, with Robert Harkness and Arthur Brown, of Salt Lake City, associated. The plaintiff, who was an attorney, conducted his own case, assisted by his partner, Mr. Heywood.

The points raised by the plaintiff were that the term of office of the defendant, Franklin D. Richards, as Probate Judge, expired on or about the first Monday in August, 1882; that he was at that time and during the progress of this suit a polygamist and therefore not entitled to hold office; that the plaintiff, James N. Kimball, had been appointed and commissioned to this office by Eli H. Murray, Governor of Utah; that plaintiff had vainly demanded said office with its records from defendant; and that plaintiff had no plain, speedy or adequate remedy at law for the wrongs alleged to be suffered by him; wherefore he prayed for a writ of mandamus to compel the defendant to deliver to him the office and the records.

Mr. Kimball seems to have expected an easy victory. He evidently believed that Judge Emerson, in signing with his confreres, the letter which inspired the Hoar Amendment, had committed himself in his favor. Besides, Judge Richards was one of those persons who were "understood to be polygamists," and therefore, according to the plaintiff, a fit subject for peremptory ousting. This was probably one reason why a writ of mandate had been applied for, instead of a writ of *quo warranto*—the usual method of testing the title to an office—and one involving less haste than proceedings in *mandamus*.

Perhaps it was imagined, too, that Judge Richards, feeling his position to be vulnerable, would readily yield, if not to a demand for surrender, at all events before a sudden and sharp assault; and the honor of compelling a Mormon Apostle to strike his colors and abandon the fortress he had been chosen to defend was one natur-

ally coveted by his opponent. If this was Mr. Kimball's supposition, he little knew the man with whom he was dealing. Apostle Richards, with whom tenacity of purpose is a prominent characteristic, felt, from the peculiar nature of his case—the only one of its kind into which the element of polygamy entered—that he was standing in the breach and maintaining a defense for all his coadjutors. Such was indeed the fact, for, after the decision by Judge Hunter in the Salt Lake cases, matters at the capital came to a stand-still, and all eyes were turned toward Ogden, awaiting the issue of the Kimball-Richards suit, which was regarded as a test case for all the others.

The points raised by counsel for Judge Richards were these: Proceedings for a writ of mandamus could not be maintained to test the disputed title to an office. Plaintiff had filed no bond for the faithful performance of his official duties. The Hoar Amendment only authorized the Governor to appoint officers to fill vacancies, and there was not and could not be any vacancy in this case, since Franklin D. Richards had been elected and commissioned to hold the office in question for two years (from August, 1880) and until his successor should be elected and qualified. The Governor's appointment and commission to Mr. Kimball were therefore absolutely worthless. The Hoar Amendment did not create vacancies, its language evidently having been chosen to prevent such a result. If the defendant was a polygamist he could not for that reason be ousted from office until his status had been judicially determined, which had not been done.

On the 30th of October, the same day that Judge Hunter decided the cases brought before him, sustaining the demurrer of the defense and denying the writs applied for by the plaintiffs, Judge Emerson ruled upon the Kimball-Richards case, but in diametrically the opposite direction. He overruled the demurrer of the defense, and ordered a peremptory writ of mandate to issue. A stay of proceedings was subsequently granted and the case went up to the Supreme Court of the Territory. That tribunal, in February, 1883, affirmed

the decision of the District Court, and an appeal was then taken to the Supreme Court of the United States.

Before the matter could be finally adjudicated, the eight months for which Mr. Kimball was appointed, had expired, and as no good could then come from maintaining the suit, it was compromised and withdrawn, without being passed upon by the court of last resort. Judge Richards held the office in question until August, 1883, or until his successor was elected and qualified; thus gaining his point—the only one for which he had been striving—with the thanks of his coadjutors and the Mormon people generally, for his stout and able defense as the typical representative of their cause.





*Enoch B. Tripp*



## CHAPTER VIII.

1882-1883.

THE UTAH COMMISSION—SAILING BETWEEN SCYLLA AND CHARYBDIS—THE LIBERALS OPPOSE THE DELEGATE ELECTION OF 1882—THE COMMISSIONERS FAIL TO SEE EYE TO EYE WITH THE ANTI-MORMON LEADERS—THE ELECTION ORDERED, REGISTRATION AND ELECTION OFFICERS APPOINTED AND RULES ISSUED FOR THEIR GUIDANCE—THE TEST OATH—HOW THE MORMONS REGARDED IT—THE ANTI-POLYGAMY LAWS MADE RETROACTIVE—THE CASE OF MURPHY VS. RAMSEY—THE LIBERALS AGAIN ASSAIL THE WOMAN SUFFRAGE ACT—ITS VALIDITY SUSTAINED BY THE FEDERAL COURTS—THE DELEGATE ELECTION—CAINE VS. VAN ZILE—ANOTHER VICTORY FOR THE PEOPLE—THE LIBERAL LEADERS ASK CONGRESS FOR A LEGISLATIVE COMMISSION—NUCLEUS OF THE EDMUNDS-TUCKER ACT—DELEGATE CAINE TAKES HIS SEAT IN CONGRESS.

THE previous chapter noted the arrival in Utah of the five Commissioners appointed by the President of the United States pursuant to the provisions of the Edmunds Law. It has been shown how their failure to appear earlier upon the scene of their labors was made the pretext for the passage of the Hoar Amendment, under which arose the legal proceedings which have just been narrated.

It should be borne in mind that the Commissioners were not responsible for that most unnecessary piece of legislation. Rather was it due to President Arthur's delay in appointing them, and to the representations of Judges Hunter, Emerson and Twiss, suggesting in their communication to Congress a measure of that character. The Edmunds Bill was signed by the President on the 22nd of March, 1882. It was not until the 16th of June, or nearly three months later, that the commissioners were appointed; and not until July that they received their credentials. This was too late for the regular revision of the registration lists prior to the next elections. Moreover, some time would have been consumed by the Commissioners,

even had they started immediately for their destination, in traveling hither, making themselves acquainted with the local situation, and filling by appointment the hundreds of registration and election offices vacated by the Edmunds Law. Hence, those officials were not responsible for the failure of the August elections; nor for the legislation and litigation that followed. The President's delay in appointing them was probably owing to a desire on his part to make wise and judicious selections. It was for this reason—to obtain good men for the places—that he suggested to Congress an increase in the proposed salaries of the Commissioners.\*

The Chairman of the Utah Commission, Hon. Alexander Ramsey, was an ex-Governor of Minnesota, an ex-Senator of the United States, and had been Secretary of War under President Hayes. In this capacity he visited Utah with the President in the autumn of 1880. He was a kindly disposed, elderly gentleman, usually brimming with good nature, and without prejudice against the people among whom he came. His associates were younger men, and, with one exception, equally unbiased. The exception was Mr. Paddock, of Nebraska.

One of the best men on the board was Mr. A. B. Carlton, of Indiana, who, after Mr. Ramsey's resignation, became its chairman, and subsequently published, in a little volume entitled *The Wonder-Lands of the Wild West*, his seven years experience as a member of the Utah Commission. His book is fair and impartial, and contains much interesting and valuable information.

The Commissioners, Messrs. Ramsey, Paddock, Godfrey, Carlton and Pettigrew, at the request of their Chairman, held a preliminary meeting at Chicago on the 17th of July. On the 15th of August they met at Omaha, where a reporter of the *Herald* of that city interviewed the Chairman, with the following result:

“How do you expect, Mr. Ramsey, this will be met by the Mormons?”

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\* Congress acted upon the suggestion, making an appropriation increasing the salaries from \$3,000 to \$5,000 each per annum.

“I think they will accept the rulings of the law. If they do not, they will simply make a judicial question of it and carry it up from court to court.”

“You do not expect any trouble, then, any resistance at elections by force?”

“Oh, no. They are too sensible out there to attempt anything of that kind in the face of the nation. They know now what the law requires and they will not wilfully attempt to evade it.”

“How will the Commission prove that these men are married, and how much they are married?”

“I cannot say,” answered the Governor, laughing. “how we will get at that. They are honest; perhaps they’ll confess. Now, wouldn’t you confess?”

The reporter protested that he had never been in a position to realize such a situation. “The Commission has no power, has it, to investigate the records of the Endowment House?”

“None at all, sir,” replied Mr. Ramsey; “we must simply rely on what we can ourselves discover.”

“Can the Delegate to Congress elected this fall under such circumstances be a Mormon?”

“He may be a Mormon, but not a polygamist. Why, not over ten per cent. of the Mormons are polygamists. We don’t care how many Mormons vote, we cannot interfere with their religion, but they must not be polygamists if they want to vote.”

“But do you expect that one of those much married men will sacrifice his wives for his franchise?”

“Young man,” answered the jolly chairman, “would you?”

The young man again bashfully protested that he really didn’t know anything about it, as he hadn’t even one wife yet.

“The truth is,” continued Mr. Ramsey, seriously and vigorously, “the Gentiles would have run the Mormons out of Utah long ago if it had been a state worth settling. It is not much of a state. It is irrigated a little, but has no grand farming districts like Nebraska, and Kansas, and Iowa, and—Minnesota” (with a merry twinkle) “and no state can be solid without that. Its mines are its only greatness, and I fear that they do more harm than good to a country.”

Three days after their meeting at Omaha, the Commissioners reached Ogden. Says Mr. Carlton, in his book:

One of the members of the Commission, who had been in Salt Lake City before, informed us that in the discharge of our official duties we would be “between the devil and the deep sea.” What he meant by this began to dawn on us very soon after our arrival, and was fully confirmed by the sequel.

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In the first place it should be known that there was an intense feeling of hostility between the Mormons and a portion of the Gentiles. The latter charged the Mormons with being disloyal to the Government of the United States, and with all manner of crimes and immoralities; while the Mormons charged that those Gentiles who are making war

upon them are a predatory band of adventurers and carpet-baggers, actuated by no higher motive than "to oppress the Mormons with a view to driving them to desperation, so as to steal the Mormon property." The daily newspapers in Salt Lake City, two on the Gentile side, and two on the Mormon side, were doing their part in fanning the flames of discord. Such was the community to which the Commission was sent: the Mormons expecting the Commission to deal harshly with them, under a law of Congress which they declared to be cruel and unconstitutional; while on the other hand a portion of the Gentiles—the most active and demonstrative among them—seemed to act on the theory that a Mormon "had no rights which others are bound to respect."

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The Edmunds Bill \* \* \* did not go far enough to please the ultra Gentiles, and went too far to please the Mormons.

Another unpleasant feature of the situation, to some of the Gentiles, was that the President appointed all five of the Commissioners from states outside of Utah, rejecting the slate that was telegraphed from Salt Lake City by Governor Murray, consisting of rabid Mormon-eaters of Utah.

The five Commissioners selected by the President were, or had been, practicing lawyers; and two of them had been members of the United States Senate,\* and had filled other high positions in public life. The law of Congress was the charter of their authority—and they were not the kind of men to ignore or willfully violate the law, and take a town-meeting view of the subject.

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At Ogden we were met by a large deputation of leading citizens from Salt Lake City, about half-and-half Mormons and Gentiles, among them Governor Murray, (Gentile) and Mayor Jennings (Mormon). Arrived at Salt Lake City the citizens gave the members of the Commission a public reception at the Walker Opera House. A large crowd assembled—numbering perhaps one or two thousand—made up of Mormons as well as Gentiles.

All seemed lovely, and reminded one of the "lion and the lamb," and the harmless cockatrice, and all that. But, as we more than suspected at the time, it was only the "torrent's smoothness ere it dash below."

Very soon after our arrival in Salt Lake City, we were kindly invited by the leading Gentile paper "to take a walk;" in other words it was politely intimated that we might look around a few days and go back to where we came from. We were told that we couldn't hold an election under the law; and afterwards long dissertations followed, showing to the Mormons, the Commissioners, and all other anxious inquirers, that there were insuperable difficulties in the way of the Commission doing anything. But we had read the memorable antielinax:

"The King of France, with forty thousand men,

Marched up the hill and then marched down again."

But we did not care to follow the illustrious example of the valorous grand monarch. We thought that we could legally hold the election: and we did.

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\* Messrs. Ramsey and Paddock.

After resolving to proceed with the election, we prepared printed "Rules and Regulations." The Mormons thought that some of these rules were harsh and beyond the law, particularly those requiring an oath of every person seeking to be registered; and also our ruling extending the disfranchisement by reason of polygamy back to 1862 and even beyond. \* \* \* This action gave great offense to the Mormons, and was correspondingly pleasing to the ultra Gentiles. \* \* \* But their exultation was short-lived. It was dashed to pieces by our ruling on the "Woman Suffrage" question. The Gentiles sent a deputation of lawyers, who made elaborate arguments to induce us to hold the Woman Suffrage Act of Utah to be invalid, and to make an order forbidding the women to be registered. It should be stated that the Gentiles in Utah had comparatively few women among them; so that to eliminate the whole female vote would have been a great loss to the Mormons at the elections. The Commission heard the arguments patiently and then unanimously decided against the motion. We had no authority to make new laws, nor to abrogate old ones. Woman suffrage had been established by law in Utah, with the implied approval of the Congress of the United States, for twelve years. Besides, the Supreme Court of Utah had decided that it was a valid law.

This afforded a subject for adverse criticism. The courts of Utah were then appealed to. They decided the law to be valid, and the Judges were abused and criticized.

The foregoing account of the first labors of the Commissioners impresses one with a sense of the extreme delicacy and difficulty of their position. They were between two fires, and one or the other scorched them, either way they turned. Their official bark was sailing between Scylla and Charybdis. If they avoided the rock, it was only to be menaced by the whirlpool. That they sought to interpret the Edmunds Law according to its spirit, was evident. If, in so doing, they strained the letter of that ambiguous statute—in order, as they believed, to more thoroughly express its spirit—it is not surprising. They were not Mormons, and could not be expected to take a Mormon view of the subject. They tried to be fair, or most of them did, and while politic to a degree, do not seem to have been actuated by selfish or sinister motives. They doubtless convinced themselves that in their initial acts they favored neither of the local parties at the expense of the other; except in so far as the law under which they operated discriminated against the Mormons. The fact that the Supreme Court of the United States reversed one of their earliest rulings, in which they had bent the letter of the law to the political detriment of the People's party, reflects upon the judg-

ment of the Commissioners, but does not necessarily impeach their integrity.

Their first report to the Department of the Interior was dated at Salt Lake City on the 31st of August, about two weeks after their arrival. Therein they referred to "many embarrassments and complications" encountered by them in seeking to carry out the provisions of the Edmunds Law. The main difficulty had been in making it conform to the laws of the Territory relating to elections.

Their first obstacle, as shown by Mr. Carlton, was in the shape of opposition from the leaders of the Liberal party, who were averse to the holding of an election for Delegate to Congress. Utah, it should be remembered, was at this time without a representative at Washington. Having caused the seat of her Delegate to be declared vacant, the Liberals, regarding that achievement as a great victory, naturally desired to continue reaping its results. There was a dog-in-the-manger policy. They could not win at the polls, even with the polygamists disfranchised, and a repetition of the election certificate fraud, so universally condemned, was impracticable. The Utah Commission had entered upon its duties, and Governor Murray was no longer supreme. The Liberals, in a word, could not elect the Delegate to Congress, and they were determined to prevent, if possible, his election by their opponents. Perhaps the Governor's friends imagined that Congress, on convening in December, and it being represented to them that a lawful election in Utah was impossible that year, owing to the failure of the Commissioners to arrive in time to regularly prepare for it, would authorize the Executive to appoint a Delegate. Hence their opposition to the Commissioners, who wished to hold an election, deeming the objection to it purely technical. The Territory, they argued, was clearly entitled to a Delegate in Congress, and the regular time for his election was approaching. They therefore decided, much to the displeasure of the Liberal leaders, to prepare for the event by appointing the necessary officers to revise the registration lists and conduct the election.



The County registrars appointed by the Commission were as follows:

Beaver	County	-	-	-	-	-	-	James McGary
Box Elder	"	-	-	-	-	-	-	C. J. Corey
Cache	"	-	-	-	-	-	-	C. C. Goodwin
Davis	"	-	-	-	-	-	-	Hector W. Haight
Garfield	"	-	-	-	-	-	-	David Cameron
Emery	"	-	-	-	-	-	-	Joseph E. Johnson
Iron	"	-	-	-	-	-	-	Daniel Page
Juab	"	-	-	-	-	-	-	W. C. A. Bryan
Kane	"	-	-	-	-	-	-	John Steele
Morgan	"	-	-	-	-	-	-	L. P. Edholm
Millard	"	-	-	-	-	-	-	John Kelly
Piute	"	-	-	-	-	-	-	James A. Stark
Rich	"	-	-	-	-	-	-	William Rex
Salt Lake	"	-	-	-	-	-	-	E. D. Hoge
San Juan	"	-	-	-	-	-	-	Charles E. Walton
Sanpete	"	-	-	-	-	-	-	A. J. F. Beauman
Sevier	"	-	-	-	-	-	-	Rasmus Sorenson
Summit	"	-	-	-	-	-	-	James E. Bromley
Tooele	"	-	-	-	-	-	-	David D. Stover
Utah	"	-	-	-	-	-	-	A. G. Sutherland
Uintah	"	-	-	-	-	-	-	William Ashton
Wasatch	"	-	-	-	-	-	-	John Duncan
Washington	"	-	-	-	-	-	-	James M. Louder
Weber	"	-	-	-	-	-	-	L. B. Stephens

These appointments represented all classes of the community, though only a few Mormons were chosen; most of the selections being made from the ranks of their political opponents. The appointees, as a rule, were good and reliable men; though some were arrogant and presumptuous, and in the discharge of their duties acted as petty tyrants to the great annoyance of the people. In addition to these "chief registrars," deputy registrars were appointed, one for each precinct.

The Commissioners next formulated and published rules for the guidance and government of the registrars and judges of election. The rules for the registrars were nine in number; the second and most important one reading as follows:

Such registration officer shall, on the second Monday in September next, proceed by himself and his deputies in the manner following: The registration officer of each county shall procure from the office of the clerk of the County Court, the last preceding registry list on file in his office and shall, by himself or his deputies, require of each person whose name is on said list, or who applies to have his name placed on said list, to take and subscribe the following oath or affirmation :

TERRITORY OF UTAH, }  
COUNTY OF ..... } ss.

I,....., being first duly sworn (or affirmed), depose and say that I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of..... one month immediately preceding the date hereof, and (if a male) am a native born or naturalized (as the case may be) citizen of the United States and a taxpayer in this Territory, (or if female), I am native born, or naturalized, or the wife, widow or daughter (as the case may be), of a native born or naturalized citizen of the United States; and I do further solemnly swear (or affirm) that I am not a bigamist or a polygamist; that I am not a violator of the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any woman which has been entered into or continued in violation of the said laws of the United States, prohibiting bigamy or polygamy; (and if a woman) that I am not the wife of a polygamist, nor have I entered into any relation with any man in violation of the laws of the United States concerning polygamy or bigamy.

Subscribed and sworn before me this.....day of.....1882.

.....

Registration Officer,  
.....Precinct.

And said registration officer, or his deputies, shall add to said lists the names of all qualified voters in such precinct whose names are not on the lists, upon their taking and subscribing to the aforesaid oath, and the said registration officers shall strike from said lists the names of said persons who fail or refuse to take said oath, or who have died or removed from the precinct or are disqualified as voters under the act of Congress approved March 22, A. D. 1882, entitled, "An Act to amend Section 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes." *Provided*, that the action of any registration officer may be revised and reversed by this Commission upon a proper showing, and, *Provided*, further, that if the registration officer be unable to procure the registration list from the office of the clerk of the county, or if the same have been lost or destroyed, the said officer and his deputies shall make a new registry list in full of all legal voters of each precinct of the county under the provisions of these rules.

Rule VIII ran thus :

The registration officers and their deputies shall hold their offices during the pleasure of this Commission, and shall each, before entering upon the discharge of their duties,

take and subscribe an oath in substance that he will support the Constitution of the United States, and will faithfully and impartially perform the duties of his office, and that he is not a bigamist or polygamist.

The adoption of some plan to purge the registration lists of persons not qualified under the Edmunds Law to vote had been expected. It was also foreseen that the ambiguity of the statute would cause more or less latitude to be taken by those whose duty it was to interpret and execute it. It was thought very probable that they would assume the right to do some things which neither National nor Territorial law directly authorized. The institution of a test oath, though offensive to every free man, was therefore not a matter of much surprise. Had that test oath, in every part, adhered even approximately to the language of the Edmunds Act, without imposing a condition out of harmony with the statute, and, as the Mormons thought, outside the pale of justice and morality, far less complaint would have been made, and the Commissioners would not have subjected themselves to the suspicion of partiality with a view to preventing the disfranchisement of all but Mormon law-breakers. Their only defense lay in the fact that the Edmunds Law—as subsequently avowed by its framers—was aimed solely at the Mormons and their institutions, and not at the immoralities of the Gentiles.

That part of the test oath to which the Mormons particularly objected was this:

And I do further solemnly swear (or affirm) that I am not a bigamist nor a polygamist; that I am not a violator of the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation!

The words capitalized were not in the Edmunds Law, nor in any other law relating to Utah. They were an interpolation by the Commissioners; as much so as the phrase "being a citizen" was an interpolation by Governor Murray in the law under which he assumed to act when he gave to Allen G. Campbell the election certificate belonging to George Q. Cannon. Some believed that the Commissioners had taken a leaf from the Governor's book in the matter of the test

oath; he having previously required of notaries public appointed by him an oath to the same effect—called by the Mormon press “the Governor’s immoral test oath”—prior to giving them their commissions.

Said the *Deseret News*, in relation to the test oath formulated by the Commission:

Let us look at the effect of this provision. It will exclude from the registry lists, and consequently from the polls, all persons who cohabit with more than one woman *in the marriage relation*, but let in the libertine, the whoremonger, the adulterer and the seducer; it will also exclude every woman who is married to a man who cohabits with any other woman in the marriage relation, whether by her consent or not, and let in prostitutes and harlots, however vile and polluted. A married man who consorts with the denizens of the lowest haunts of vice, or keeps any number of mistresses, or leads astray other men’s wives, or betrays and seduces innocent girls, is, under this provision of the Commissioners, competent to be registered and to exercise the suffrage; but a man who has married two or more wives and lives with them in the marriage relation, is not permitted to register or to vote.

This is in close accord with Governor Murray’s official morality, and is indeed the illegal and immoral oath prescribed by him to notaries public, tacked on to the oath provided in the local statute. If the Commissioners can stand the effect of their action, we can. We are not under any concern about this, let it be understood. Persons whom the Edmunds Act seeks to deprive of the franchise were not intending to vote at the November election. They would have stayed away from the polls if there had been no new legislation in their case like that enacted by the Commissioners. But they did not intend, and do not intend, by staying away from the polls, to relinquish any right of citizenship or any privilege of law of which unconstitutional legislation has sought to deprive them. Therefore, this premium on lasciviousness and encouragement to debauchery, embodied in the oath added to the law by the Commissioners, will not affect our side of the question.

If it had not been inserted it might have kept quite a number of Liberals away from the registration officers. Some of them would, with unblushing cheek, have taken the oath that they do not cohabit with more than one woman, but others, notoriously unchaste, we think have yet enough self-respect and sense of danger arising from perjury not to subscribe to an oath which their lives will not justify. Now, however, they can take it with impunity, in company with the most corrupt debauchees in the country, while the husband of two wives, who has kept himself true to his marriage covenants, stands aside as unfit for such company, as he truly is. The excluded husband of plural wives will stand on a moral plane which the tainted and defiled cohabiter with women *out of the marriage relation* cannot reach by any process, and may congratulate himself that a dividing line is placed between him and the besmirched voter, even if it is drawn without the shadow of legitimate authority.

But if the Commissioners have gone too far in Rule 2, they have not gone far enough in Rule 8, supposing that they have any power at all to prescribe the oath. They there

provide that the registration officers whom they appoint, and their deputies, shall take a certain oath, but it does not include the cohabitation clause at all; they simply swear that they are not bigamists or polygamists: they may cohabit with as many women as they please, in or out of any kind of a relation, but may strike the names off the registration lists of those who do not take the Commissioners' enacted oath in all its parts. How is that for consistency?

The Mormon people did not propose to sit supinely and allow any such discrimination to daunt them. With all polygamists disfranchised they were still in the great majority in the Territory, and, unlike their opponents, had no reason to fear the result of an election, if each party was given a fair field, "a free ballot and an honest count." The First Presidency, in an address to the members of the Church, dated at Salt Lake City, August 29, 1882, animadverted upon the Commissioners and their test oath, and counseled their own followers in this wise:

It has been with feelings of profound regret that we have seen the Commissioners, men of high position and bearing honored names, take this view of the law, and frame such an oath as this to be administered unto the people, yet on the other hand, it is with unmixed satisfaction we perceive that the oath draws the line so sharply and distinctly between marriage and licentiousness. By the attempt in the construction of this oath to shield from injury those who, by their illicit connections with the other sex, might, under the provisions of the Edmunds law, be disfranchised, the Latter-day Saints, who, in all sincerity and honor, have obeyed a revelation from God, are not reduced to their degraded level.

Our counsel, then, is to the Latter-day Saints, who can truthfully take this oath, there is no reason we know of in the Gospel, or in any of the revelations of God, which prevents you from doing so. You owe it to yourselves; you owe it to your posterity; you owe it to those of your co-religionists, who, by this law, are robbed worse than even many of yourselves, of their rights under the Constitution; you owe it to humanity everywhere; you owe it to that free and constitutional form of government, which has been bequeathed to you through the precious sacrifices of many of your forefathers—to do all in your power to maintain religious liberty and free republican government in these mountains, and to preserve every constitutional right intact, and not to allow, either through supineness or indifference, or any feeling of resentment or indignation because of wrongs inflicted upon you, any right or privilege to be wrested from you. Very many of you can take this oath with conscientiousness and entire truthfulness, as you could even if it were in a form which many of your traducers could not take without perjury: and yet there would be no impropriety, while you do take it, in protesting against it as a gross wrong imposed upon you.

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In regard to your political arrangements, the Territorial Central Committee is an

organization that has for its object the preservation of the rights of every citizen of this Territory, without regard to party or sect. They will doubtless issue such instructions, from time to time, as circumstances demand. It is in the interest of every patriot to faithfully observe and practically carry out the suggestions that they may make.

The next act of the Commission was the issuance of an order prohibiting the registration of any person, male or female, who, at any time since the passage of the anti-polygamy laws of 1862 and 1882, had lived in bigamous or polygamous relations. This ruling was in response to a question submitted to the board by Registrar W. C. A. Bryan, a Mormon, who desired to know if men who had once married plural wives, but were not then living with them, could be registered as voters. The decision of the Commission was a surprise to most people; but it had one merit—and only one—that of impartiality. It not only disfranchised men and women who, though members of the Mormon Church and at one time practitioners of polygamy, had ceased, on account of the death of husband or wife, or for some other cause, their plural marriage relations; but it deprived of the suffrage persons who did not then belong to the Church, but while connected with it in former years had lived in polygamy, which they had not practiced since their defection from Mormonism. “Once a polygamist, always a polygamist,” was the position taken by the Commissioners. That it was a false and untenable position the sequel showed.

In the first place, it was clearly outside the intent of the Edmunds Law; in passing which Congress had legislated to discourage and suppress the *practice* of polygamy; not to punish those who had abandoned their polygamous relations, were living within the law, and were shielded by the statute of limitation from prosecution for past offenses. In the next place it was impossible, without wresting the law and making it retroactive,—a proceeding as illegal as unjust,—to reach the cases of many affected by this remarkable ruling.

Take one example—the case of Hon. William Jennings, Mayor of Salt Lake City. He had been a polygamist, but had never broken either



*Philip Ragsley,*





of the anti-polygamy statutes—that of 1862, which was aimed at the act of plural marriage, without reference to cohabitation; or that of 1882, which made cohabitation an offense as well as the act of marriage. Simultaneously the husband of two wives, he had married both prior to 1862. His marriages therefore were not in violation of the earlier law, which was not retroactive. Then, as to unlawful cohabitation, an offense against the law of 1882; his first wife died in the year 1871, eleven years before the enactment of that law, and during this time and since the Edmunds Law went into effect, he had lived with but one wife. Mr. Jennings could take the test oath with the utmost propriety. His case, though it did not come up until June 1883, when the Commission decided that he was disqualified as a voter, was typical of others that arose in the fall of 1882. The date of the order deciding the question was September 1st, of that year.

The case destined to test this matter and call forth a decision from the Supreme Court of the United States reversing the ruling of the Commissioners, was that of Jesse J. Murphy et al. vs. Alexander Ramsey et al., in which the plaintiffs—Jesse J. Murphy, Mary Ann Pratt, Mildred E. Randall and Alfred Randall, Ellen C. Clawson and Hiram B. Clawson, and James M. Barlow—had been refused registration and denied the right to vote in the autumn of 1882.

The ruling—"once a polygamist always a polygamist"—did not give much satisfaction, even to the Anti-Mormons. It was a two-edged sword, cutting both ways; decimating the ranks of the Liberals as well as those of the People's Party. Moreover, it was generally regarded as unjust. Shortly after its issuance Judge Hoge, the registrar for Salt Lake County, appointed his deputies for the various precincts; the Utah Commission confirming them. The position of deputy registrar for the Fourth Precinct of Salt Lake City was offered to Mr. Alfales Young, who declined it, being unwilling to take part in the disfranchisement of persons who, whatever their past lives had been, were not then practicing polygamy or living in violation of any law. He denounced the action of the Commissioners as

an outrage. Mr. Young was a son of the late President Young, and was a non-Mormon. The position refused by him was tendered to Mr. Arthur Pratt, also a non-Mormon; a son of the late Apostle Orson Pratt. He, after some hesitation, accepted it.

It was from the action of this official in refusing to register Mr. Jesse J. Murphy—an action confirmed by Registrar Hoge and the Commission—that that gentleman appealed. Mrs. Mary Ann Pratt was denied registration by Deputy Registrar John S. Lindsay; Mr. and Mrs. Randall and Mr. Barlow by Deputy Registrar Harmel Pratt; and Mr. and Mrs. Clawson by Deputy Registrar James T. Little.\* All these deputies, with Registrar Hoge and the members of the Commission, were made defendants in the suit, or suits, for damages, instituted by Mr. Murphy and the other plaintiffs named.†

The Utah Commission having refused to declare the Woman Suffrage Act invalid, another appeal was made by the Liberals to the Federal courts, in the hope that they would do something in the matter. Test cases, in all respects similar to each other, were instituted in the three judicial districts about the middle of September. It was arranged that the cases in the First and Third Districts should be heard jointly at Salt Lake City by Judges Hunter and Emerson, while Judge Twiss sat upon the other case at Beaver.

The joint hearing took place on the 18th and 19th of September. The case in the Third District arose from the refusal of William Showell, deputy registrar of the First Precinct of Salt Lake City, to register Mrs. Florence Westcott as a voter; she claiming to possess

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\* It fell to the lot of Mr. Little to refuse registration to his own father, Hon. Feramorz Little, ex-Mayor of Salt Lake City, who had once been a polygamist.

† Judge Jere S. Black pleaded the cause of the Mormon people against the Edmunds Law, the Hoar Amendment, Governor Murray and the Utah Commission in a powerful argument before the Secretary of the Interior at Washington about the last of September, 1882. His address was directed to that official in the absence of the President and the Attorney-General. On the 1st of February, 1883, the eminent jurist also spoke against the Edmunds Law and for the right of local self-government in the territories, before the Judiciary Committee of the House of Representatives, which was then considering another anti-Mormon measure. This was only a few months before his death, which occurred August 19, 1883.

all the qualifications entitling her to registration. Mrs. Westcott, like Mr. Showell, was a Liberal. The ground of the refusal to register the applicant was that the act conferring upon women the elective franchise was invalid. The case was argued by Messrs. Sutherland, Merritt, Harkness, Brown, and McBride. Chief Justice Hunter, in his decision, affirmed the validity of the Woman Suffrage Act and ordered the registrar to enter the name of Mrs. Westcott upon the list of voters. Judge Emerson disposed of the case from Ogden in like manner. Judge Twiss, at Beaver, rendered a decision the same in all respects but one. He sustained the validity of the act in question, but held that women, in order to vote, must be tax-payers. This ruling was rendered inoperative by one from the Utah Commission, which body, about the middle of October, in response to a question submitted by Attorney S. A. Kenner, decided that every woman in the Territory (otherwise legally qualified) was entitled to vote at the November election, whether she was a tax-payer or not.

Preparations were now made by the political parties in Utah for a brief but vigorous campaign, prior to the Delegate election. It is doubtful that the People's party was materially injured by the disfranchisement of the polygamists. It still had an overwhelming majority in the Territory, and its decimated ranks were refilled by many young Mormons, who, hitherto indifferent in politics, now came forward, some from sheer sympathy with their disfranchised parents, and registering, ranged themselves under the banner of their sires. "If dad can't vote, he's got ten sons that can," one Mormon boy remarked. Still, the managers of the People's party deemed it advisable to make more than an ordinary effort to awaken the enthusiasm of their voters. The Liberals were no less active, and the campaign that followed marked a new era in local political warfare.

The Liberals were the first to place a candidate in the field. Their convention met at the Walker Opera House\* on Wednesday,

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\*The Walker Opera House, the Gentile Theatre of Salt Lake City, was begun in August, 1881, under the auspices of the McKenzie Reform Club, a temperance organization. It was first called the Academy of Music, but after passing into the possession

the 11th of October. A temporary organization, with M. M. Kaighn as chairman, was succeeded by a permanent organization with J. R. McBride in the chair. The following platform was then adopted:

1. That the highest political duty of every American citizen is to be loyal to the nation under whose flag he lives, and to yield ready obedience to all the laws enacted by its authority to effect its conduct and government.

2. That we are in favor of equal and exact justice to all citizens without regard to nativity, creed or sect, and the honest enforcement of the laws against all offenders, without regard to their opinions, social, religious or political.

3. That the laws of Congress heretofore passed for the purpose of suppressing polygamy, practiced in Utah under the pretense of a religious right and duty, and to prevent the Mormon Church from perverting the local government provided by the Organic Act, into a means of advancing the interests of that sect in disregard of the rights of those not of that faith, have our emphatic approval and support, and the effort thus far successful of that Church to prevent the execution of those laws, stamp it as a law-defying organization, of which we express the most positive condemnation.

4. We arraign the Mormon power in Utah on the following grounds: It exalts the Church above the State in matters of purely administrative and political concern. It perverts the duty of the representative in official and legislative matters by demanding that the interests and wishes of that sect and of the priesthood shall be made paramount considerations. It destroys the freedom of the citizen by assuming the right to dictate his political action and control his ballot. It teaches that defiance of the law of the land when counseled by its priesthood is a religious duty. It encourages jurors and witnesses, when attempts are made in the ordinary course of law to punish the crime of polygamy, to disregard their duties in order to protect offenders who are of their faith. It discourages immigration and settlement upon the public lands, except by its own adherents, and by intolerance and gross personal outrages on non-Mormon settlers, drives them from the common domain. It restricts commerce and business enterprise by commanding its members to deal only with houses of which it approves, thus creating vast monopolies in trade in the interests of a few men, who engross the favor of its hierarchy and enjoy the income of its people. It oppresses the people by taxation, unequal and unjust, and its officers neither make nor are they required to give any satisfactory account of the disbursement of public funds. It taxes the people to build school houses and therein teaches the tenets of the sect by teachers licensed only by its priesthood—most of whom are incompetent and unlearned except in Mormon doctrines. It fills the public offices with bigoted sectarians and servants, without regard to capacity for official station or public employment. It divides the people into classes by religious distinction and falsely teaches its adherents that those not of their faith are their enemies, thus sowing suspicious and bigotry among the masses. It confers on woman the suffrage and then forces her to use

of the Walker Brothers was re-christened. It was opened on June 5, 1882, with a concert by the Careless Orchestra. It enjoyed, side by side with its rival, the Salt Lake Theatre, several years of prosperity, but finally fell a victim to the fire-fiend.

it under the lash of its priesthood, to perpetuate their power and her own degradation. It robs thousands of women of honorable wedlock and brands their children with dishonor, so that they may be forever deterred from any effort for relief from its grasp. In a word, it has made Utah a land of disloyalty, disaffection and hatred toward the Government; has retarded its growth, prosperity and advancement; set its people at variance and discord with the fifty millions of people in the United States, and made its history a reproach to the Nation. For these offenses, to which many more might be added, we arraign the Mormon power in Utah, and invoke against it and its monstrous pretensions and practices the considerate judgment of the citizen voter, the statesman and the Christian, and humbly submit that our attitude toward it is not only justified but demanded by every consideration that ought to control the true American citizen in the discharge of political duty.

5. That while this organization, calling itself a Church, asks immunity for its acts on a plea of religious belief, it is in reality a social, commercial and political body; and while we recognize the fact that many of its members are controlled by honest motives, and would, if freed from their obligations to the body, be faithful citizens, we equally assert that the organization is an enemy of all government except its own, and that there can be no fair and impartial civil government in Utah while the Mormon Church is permitted to control the law-making power.

6. That while the act of June, 1874, commonly known as the Poland Bill, the act of March, 1882, commonly known as the Edmunds Bill, with the Hoar Amendment of July, 1882, have all given great relief to the non-Mormons of Utah, and while for this legislation we express our sincere thanks to the senators and representatives who originated and passed it; we here repeat the resolve of our last Territorial Convention, that no attempted remedy which leaves the political power of the Territory under the control of the Mormon priesthood will ever be successful in reforming the evils we complain of, and that the peaceful, thorough and effective remedy will only be found by the adoption of a measure by which the legislative power of the Territory shall be given to a Council or Commission appointed by and under the authority of the United States, and answerable to it for the faithful performance of its duties.

7. That we hail with joy the dawn of a brighter day for priest-ridden Utah, and we invite the loyal, independent members of the Mormon Church to co-operate with us in an honorable political effort to confine the Church to its legitimate work, and free every voter from priestly dictation: to drive from office the men who have squandered our municipal, county and Territorial funds, and to hold our official servants to the strictest accountability; to establish and maintain a system of unsectarian free schools: to develop the varied material interests of this wonderfully rich Territory; to harmonize the antagonism engendered by the arbitrary, intolerant rule of the now defunct polygamous dynasty; and, in fine, to lay broad and deep the foundation of a loyal, intelligent and enduring commonwealth.

8. That in Eli H. Murray, our present Governor, we recognize a faithful, fearless, and patriotic public officer, one who, in denying a certificate of election to an alien and a polygamist as a Delegate to the Forty-seventh Congress, and in granting such certificate to the only person eligible at that election, performed his official duty in a bold, manly,

and patriotic manner, and opened the way to a contest which resulted in the defeat and rout of the representative of polygamy from the hall of the National Congress; and we further give to Governor Murray, in his attempt to discharge the duty imposed by the Hoar Amendment, our cordial approbation, and announce it as our opinion that but for the treasonable counsels of the Mormon hierarchy, urging resistance to the appointments made by His Excellency, the present unseemly contest to nullify the laws by opposition in the courts would not have been made.

9. That in the Edmunds Law, and the Hoar Amendment, the latter suggested by the judicious wisdom of the patriotic and faithful judges of our Supreme Court, we recognize that Congress has determined that means shall be adopted adequate to reform the political condition of Utah; that we express our gratitude for those measures, and pledge ourselves to labor to make them effective for the purposes intended.

10. That the judicious conduct of the Utah Election Commission in conducting the registration of voters for 1882, under circumstances of great and peculiar difficulties, challenges our admiration and approval, and we truly tender to the Commission the thanks of citizens who have learned to appreciate the prospect of a fair vote and an honest count.

11. That this convention represents, in the non-Mormon population, not less than thirty thousand fair-minded, loyal, just and patriotic people, and we resent with indignation the assertion and imputation that in urging the reformation of notorious abuses in the government of this Territory, we are organizing a scheme to plunder the Mormons of their property and worldly possessions; and whether such imputations emanate from the priesthood, whose political power we oppose, or their tools of the press, or any other power, subsidized or not, we denounce it as without color of support in fact, and the vile concoction of villifiers and slanderers.

12. That to Allen G. Campbell, the standard-bearer of the Liberal party for the last two years, we express our admiration and gratitude for his services and his faithfulness to the Liberal cause.

The first nominee for Delegate to Congress was Allen G. Campbell, the gentleman eulogized in the closing paragraph of the platform. He promptly declined the nomination, as he was doubtless expected to do; it being tendered merely as a compliment in recognition of his past services. Judge Van Zile was the favorite of the convention—though Judge McBride and Colonel Ferry each had supporters—and on October 12th he was made its unanimous choice for Delegate. In accepting the proffered honor Judge Van Zile made a brief and temperate speech, in which he conceded the prospect of defeat at the polls, but declared that the spread of Liberal principles in the campaign would be equivalent to a victory. Subsequently, in



Ralph Willis Hunt





a meeting at Ogden, he declared that his election meant Statehood, and his defeat a Legislative Commission for Utah.

The convention of the People's party assembled at the City Hall, Salt Lake City, on Monday, October 9th, and formed a temporary organization with Judge R. K. Williams, of Ogden, as chairman. Mr. Williams was a non-Mormon, the law partner of F. S. Richards, Esq. The convention adjourned to October 12th, when a permanent organization was effected, with Hon. Wilson H. Dusenberry, of Provo, as presiding officer.

Messrs. Abram Hatch, Nathan Tanner and John R. Murdock were appointed a committee to wait upon Governor Murray and request him to call a special election, to be held on the same day as the regular Delegate election, for the choosing of a Delegate to serve during the unexpired portion of the Forty-seventh Congress. An adjournment was taken until 6:30 p. m., when the committee named reported that they had waited upon the Governor, as requested, and he had stated that he was aware of no law authorizing him to call such an election, but if the Convention or the committee would cite him to any statute conferring upon him that authority, he would be most happy to comply with their wishes. Speeches were made by S. R. Thurman, Abram Hatch, F. S. Richards, J. R. Murdock and Mrs. M. I. Horne: after which an adjournment was taken until next day, when the convention adopted the following declaration of principles:

The People's party, struggling for supremacy of constitutional law and the sacred privilege of local self-government, submit the following declaration of principles:

1. We believe that the protection of life, liberty and the pursuit of happiness is the object of free government, and that the Constitution of the United States was ordained and established to secure the greatest possible liberty to man, woman, and child, consistent with public welfare.

2. We believe that free government can only exist where the people governed participate in the administration thereof.

3. We believe that any party or faction of a political community that seeks to subvert the institutions of local self-government, aims a deadly thrust at the Constitution, and that such party or faction is unworthy the suffrages of a free people.

4. We believe that any official who attempts to stifle the popular voice, as expressed at the ballot box, is guilty of treason against the sovereign people.

5. We believe that the right to frame laws suited to the requirements of the Territory having been vested by Congress in the Legislature elected by its citizens, to deprive them of that right by substituting a Commission, arbitrarily appointed, and thus disfranchise a hundred and fifty thousand people, and reduce them to a condition of serfdom, would be unprecedented in the history of the Nation—an act that could not be justified by any actual necessity, and that the attempt by a pretended political party to create such a revolution in the government of this Territory is worthy only of conspirators and political adventurers.

6. We believe in the right of the people of a Territory, as well as of a State, to test, in the courts established by the government, the constitutionality or construction of any enactment, local or congressional: and express our astonishment at the public declaration of a high Federal official of this Territory, and the enunciation by a so-called political party, that the people have no rights except such as Congress may grant to them, and that to differ with the Territorial executive about the construction of a statute is nullification. We utterly repudiate such a monstrous doctrine as worthy alone of the most absolute despotism, and claim that the United States Constitution, in its benign provisions, extends alike over the States and Territories of the American Union, and that it is the bounden duty of the Governor, as much as the humblest citizen, to yield obedience to the laws as they are construed by the courts. We utterly repudiate the unconstitutional attempt by any executive to usurp judicial or legislative functions, and to hold the American citizen bound by the partial, prejudiced, unfair and illegal construction which he may see fit to place upon any statute.

7. Citizenship is the basis of the right of suffrage. While the elective franchise is a privilege conferred by law, the qualifications for its exercise grow out of the condition of citizenship, and as citizenship is not dependent upon sex or regulated thereby, whatever right of voting originates in the citizenship of men inheres also in the citizenship of women. Female citizens, equally with male citizens, are amenable to the law, therefore they are entitled to an equal voice with men in the framing of the law. As all just powers of government are derived from the consent of the governed, and that consent is expressed by the suffrage, and as women as well as men are made subject to the government of this country, the denial of the suffrage to women is inconsistent with the principles which underlie our national institutions. The moral and intellectual, as well as physical excellence of our sons and daughters being largely dependent upon the mothers who bear and train them, the women of the nation should be endowed with full political freedom, that, being made familiar with political rights and principles, they may be able to instill into the hearts of the rising generation the spirit of patriotism, the love of liberty, and a reverence for republican institutions. For twelve years the women citizens of Utah have enjoyed the right to vote at all elections in this Territory, and have exercised it with credit to themselves and to the benefit of the community, and the People's party hereby denounces the attempts which have been made to deprive women voters of the right of suffrage, as illiberal and unmanly assaults upon vested rights and upon justice, equality, and the principle of popular sovereignty.

8. We believe in an honest and economical administration of government, and point with pride to the economy and honesty with which the public affairs have been

administered by officer selected from the ranks of the People's party, and also to the fact that the taxes in Utah are lighter than in any other Territory; the Territory is out of debt; the counties, with one or two exceptions, are in the same satisfactory condition. The records fail to furnish any instance of embezzlement or misappropriation of public funds by any official of that party. On the other hand, when, by frauds committed at the polls, Tooele County was wrested from the popular control, the taxes of the county were shamefully misappropriated and embezzled; county scrip depreciated from par to less than fifteen cents on the dollar, and even by the economy and honesty of the People's officials, who have resumed control of its affairs, and although its paper is now worth ninety per cent., Tooele County is not yet quite out of debt and has not fully recovered from the evils of "Liberal" rule.

9. We repudiate and deny the charges of lawlessness which have been made against the people of Utah, and as proof that those slanders are without foundation, we point to the records of the courts, the chief of which are not in any way in the control of the people, and which demonstrate the striking fact that the so-called "Liberal" class, constituting less than twenty per cent. of the population of the Territory, furnishes over eighty per cent. of the criminals.

10. We further repudiate and deny the charges that in Utah a church dominates the state; that priestly control is exercised in any manner to infringe upon the freedom of the individual, either at the polls, in convention or in any official capacity; that perjury or falsehood of any kind is justified, whether for the protection of persons from the action of law or for any other purpose whatever; that intolerance is exhibited either for the discouragement of emigration, the settlement of the public domain or invasion of the rights of any individual; that any unequal taxation is either encouraged or permitted; that public accounts are not given of the expenditure of public moneys; that the tenets of a church are taught in the district schools, or that the people are influenced to disloyalty or antagonism to the government of the United States or any of its representatives.

11. We affirm that it is the duty of every American citizen to render obedience to the Constitution of the United States and every law enacted in pursuance thereof.

12. We affirm with confidence that the Territory of Utah, having the requisite population and exhibiting all the qualifications necessary to self-government, its people being exceptionally honest, thrifty, sober, frugal and peaceable, is entitled to admission into the Union as a sovereign State.

13. We pledge ourselves as a party to the maintenance and defense of constitutional principles and the inalienable rights of mankind, and proclaim ourselves the friends of true liberty—civil, political and religious, to all people in every part of the habitable globe.

Nominations for Delegate to the Forty-eighth Congress followed. Three names were put forward—Franklin S. Richards, John T. Caine and William H. Hooper. Mr. Richards declined, and requested his friends to vote for Mr. Caine, whom he had nominated. Mr. Hooper's name was withdrawn at his request, and Mr. Caine was made the unanimous choice of the convention. He was also named

as candidate for Delegate to serve out the unexpired portion of Hon. George Q. Cannon's term in the Forty-seventh Congress. Escorted into the hall, Mr. Caine was received with enthusiasm and accepted the nomination in a modest but telling speech.

Prior to adjournment the following resolution was offered by Hon. C. W. Penrose:

*Resolved*, That in the Hon. George Q. Cannon the people of Utah have had an able, upright and fearless gentleman as their Delegate in Congress for several sessions; that his exclusion from the present Congress was a cruel blow aimed at the right of representation; that the honorable gentleman has the confidence, esteem and admiration of the People's party, and that we hereby tender him the thanks of the people for his faithful services in their behalf.

The resolution was unanimously adopted, and the convention adjourned *sine die*.

Immediately after his nomination, Mr. Caine received the following communication from his opponent, Judge Van Zile:

SALT LAKE CITY, UTAH, October 13. 1882.

*Hon. John T. Caine:*

MY DEAR SIR:—You have today received and accepted the nomination for Congress at the hands of the "People's party," and I understand your party is anxious to make a thorough canvass of the Territory. Believing that the principles and claims of the two parties can be better understood by the voters by listening to a joint discussion, I do most respectfully challenge you to discuss with me the political issues, at public meetings to be arranged for by the two central Territorial committees throughout the Territory. The time to be divided between us at each joint discussion as follows:

The opening speaker to have forty-five minutes to open; the speaker to follow to have one hour to answer; the one who opens to have fifteen minutes to close the debate. As the time is very short before election day I am anxious for an early reply, and hope to hear from you by tomorrow (Saturday) evening.

Hoping you will accept this challenge, I am yours very respectfully,

PHILIP T. VAN ZILE,

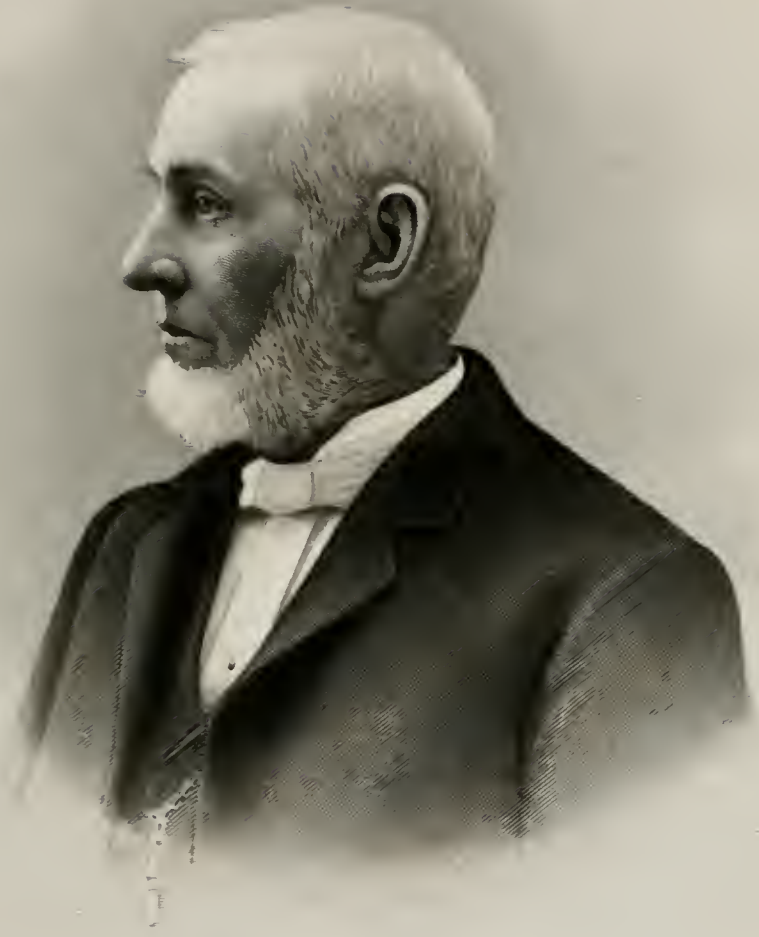
Nominee of the Liberal party of Utah.

To which Mr. Caine responded:

SALT LAKE CITY, Oct. 16th. 1882.

*Hon. Philip T. Van Zile, Salt Lake City:*

DEAR SIR:—Referring to your favor of the 13th inst., which I did not receive until Saturday afternoon, I beg to say that I do not agree with you in believing that the principles and claims of the two parties can be better understood by the voters by listening



*John Broome*



to joint discussions, as I fail to see that my party has anything to gain by such discussions. Its members are fully confirmed in their principles and claims and care nothing for the views of the so-called Liberals: and I cannot ask my friends to attend meetings under the pretense of listening to a discussion of political issues, when, judging from the past, so far as the Liberals are concerned, it would be nothing but an attack upon their religious principles.

I propose to conduct my campaign in the interest of my friends, the party who nominated me, and not in the interests of my opponents: and I do not propose to furnish the latter with audiences which they could not otherwise obtain, nor in any other manner give them either aid or comfort.

I therefore most respectfully decline your challenge, and remain,

Very Truly Yours,

JOHN T. CAINE.

Ratification meetings were held by both parties at Salt Lake City and the principal towns of the Territory, and for the first time in the history of Utah, political parades, with bands of music, torches, Chinese lanterns, Roman candles, and other pyrotechnics illuminated the streets, whose stones re-echoed the tramp of marching hosts filling the air with hopeful shouts and stentorian prophecies of victory. Each party put forth its utmost exertions, the orators on either side vying with their opponents in eloquence, wit and satire. Never had Utah witnessed such enthusiasm over an event of this character.

On Tuesday, November 7th, the issue was decided, and nine days later, in the presence of four members of the Utah Commission—Colonel Godfrey being absent—the board of canvassers appointed by them for the purpose, opened and began to count the returns of the election. The board consisted of Elijah Sells, C. C. Goodwin, F. S. Richards, D. C. McLaughlin and W. N. Dusenberry. Hon. John T. Caine, Hon. P. T. Van Zile and others were also present. Prior to the count being made, a protest from Mr. Van Zile was submitted to and considered by the Commission and the board of canvassers. Therein the canvassing of the votes claimed to have been cast for Mr. Caine was objected to on the following grounds:

1. That the ballot used by the People's party at the late election embodied two distinct tickets, for two different offices, namely, one for Delegate to the Forty-seventh Congress, and one for Delegate

to the Forty-eighth Congress, for the former of which there was no authority.

2. That the unusual size and shape of said ballot marked the envelope used for enclosing the same at the time of voting, thus causing it to be other than a secret ballot as required by law.

3. That John T. Caine was ineligible for the office of Delegate, he being, within the meaning and fair construction of the Edmunds law, a polygamist.

Mr. Caine, who was well known to be a monogamist, smiled at the charge of polygamy, and denied all the allegations. The Commissioners took the matter under advisement, and allowed the canvass to proceed. Subsequently, they sent for Judge Van Zile and asked him if he was prepared to prove his charge of polygamy against Mr. Caine. The Judge replied that he was prepared to prove it on the ground only that he presumed Mr. Caine to be a believer in polygamy. Whereupon the Commissioners overruled the protest. In the evening Judge Van Zile returned to the charge with the following document:

*To Messrs. Sells, Goodwin, Dusenberry, Richards and McLaughlin, members of the Board appointed to canvass the returns of the election for Delegate to Congress, held in the Territory of Utah, November 7th, 1882.*

GENTLEMEN:—I hereby protest against the issuance of any certificate to any person—or any certificate of election to any person voted for as Delegate to Congress, either the Forth-seventh or Forty-eighth, at the election held on the 7th day of November, 1882, in the Territory of Utah, on the ground:

That by law you are only authorized to receive the returns from the various precincts of the different counties of the Territory and make an abstract of the same, which abstract must be sent to the Secretary's office and the Governor and the Secretary are then required to canvass the same, and the certificate of election can only be issued by the Governor of the Territory to the person whom he shall find to have received the highest number of votes.

Second—I protest against any return of the vote at the late election aforesaid for the reason that the returns are incomplete in that the precincts of Pahreah and Johnson, in Kane County; Bluff City and Montezuma, in San Juan County; Arizona, in Sevier County; Deep Creek, in Tooele County; Leeds Precinct, Poll No. 1, in Washington County, and Pine Valley in the same county, have made no return of any vote to your board; and any canvass at this time is premature.

The above protest I make as a candidate voted for at the above election for Delegate to Congress.

PHILIP T. VAN ZILE.



A debate ensued in which Judge McBride, who represented Mr. Van Zile, and the Commissioners and board of canvassers took part. It resulted in another defeat for the Liberal candidate. All the members of the board, including those of his own party, united in the view that the Commissioners were authorized by law to conduct the election, and that in pursuance of that authority the canvassers themselves had been appointed to perform a specific duty, to wit: to open and count the returns, declare the result of the election, and issue a certificate to the person having the greatest number of votes.

That person was found to be John T. Caine, who had received 23,039 votes, while Philip T. Van Zile had received but 4,884 votes for Delegate to the Forty-eighth Congress. Mr. Caine accordingly received the certificate. As to the ballots cast for Delegate to serve out the unexpired term in the Forty-seventh Congress, the Commissioners decided that they should not be counted as there was no law authorizing such an election.

Having completed their season's labors and made their second report to the Secretary of the Interior, the members of the Utah Commission departed for their homes in the East, followed by the good wishes of the great majority, and the anathemas of the small minority in the Territory. Now that the election was over—the election [of a monogamist by monogamists—and the Liberals were again overwhelmingly defeated, the People, who had submitted in patience to the adverse rulings of the Commission, almost forgot the discrimination that had been practiced against them, in their gratitude toward the officials who, sweeping aside the sophistries interposed, had insisted upon holding an election for Delegate, and giving the certificate of election to the person entitled thereto. Mr. Carlton attributed the ill will manifested toward the Commission after the election to the decision of that body upon the question of Mr. Caine's "polygamy"\*—a decision approved even by Senator Edmunds.

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\* This afforded another occasion for the clique of Gentile agitators to denounce and criticise the Commission; and it soon began to appear, as was afterwards clearly demon-

Another reason for the acrimony exhibited toward the Commissioners was their refusal to recommend in their annual report "Congressional legislation of a radical character." The Anti-Mormons wanted Republican government in Utah abolished and the Territory governed by a legislative commission, to be appointed by the President and its members selected from the ranks of the Liberal party. One member of the Commission—Mr. Paddock—had been won over to these views, and was "for wiping out the entire Territorial government and the setting up of a commission to act in a legislative capacity with power to enforce its decrees." His colleagues opposed such extreme measures, and rather than recommend them, bore patiently the abuse heaped upon them.

Failing to induce the Commission to act, the leaders of the Liberal party took upon themselves the task of petitioning Congress for what they desired. A memorial to that end, dated at Salt Lake City, on the 28th of November, 1882, and signed by the Liberal Central Committee of the Territory, was presented in the House of Representatives by Mr. Haskell on the 4th of December, and referred to the Committee on the Judiciary.

About the same time bills were introduced in the Senate and the House—the former by Senator Edmunds, the latter by Mr. Cassady, of Nevada—providing (1) that in prosecutions for polygamy a man's lawful wife should be a competent witness against him; (2) that personal service of a subpœna should not be necessary before the issue of an attachment to compel the attendance of the person named in the unserved subpœna, and (3) that no statute of limitations should be pleaded against a prosecution for bigamy or polygamy. These bills, said to have been prepared by and introduced at the request of Judge Van Zile, who was at Washington for that and other purposes, formed the nucleus of the Edmunds-Tucker Act, which became law several years later. It was against the Liberal

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strated, that no Federal official could receive the commendation or avoid the venomous abuse of that coterie, except by the most abject and servile submission to their dictation."

—A. B. Carlton.

memorial and the anti-Mormon legislation enacted and in contemplation that Judge Black, in February, 1883, before the House Committee on the Judiciary, directed the thunders of his oratory.

Shortly before the opening of Congress in December, 1882, Hon. John T. Caine set out for Washington, in company with Messrs. James Sharp, F. S. Richards and David H. Peery. These four gentlemen were a committee appointed by the Constitutional Convention to urge upon Congress Utah's claims to Statehood. Mr. Caine, the newly elected Delegate, also went to the capital to secure his admission to the Forty-seventh Congress—which would expire March 4, 1883—and to take his seat in the Forty-eighth Congress, which would begin on that date. There was no doubt of his success in the latter case, as he carried the certificate of his election furnished by the Utah Commission; but it was a question whether or not he would be admitted into the Congress then about to sit, the Commission having refused to have the votes counted that were cast for him in that connection. His only credentials in this case were certificates issued by some of the judges of election, to the effect that on the 7th of November, 1882, certain votes had been cast for him as delegate to the Forty-seventh Congress. These certificates he submitted to the House of Representatives. The committee to whom the matter was referred rendered a favorable report, which the House adopted, and Mr. Caine, on January 17, 1883, was duly admitted to his seat.

The ground taken in his favor was, that while there was no law authorizing the special election, there was a national statute which entitled each Territory to a delegate in Congress; and since that body had failed to legislate to meet the present emergency, and the Governor of Utah had refused to call an election in the case, and the citizens of the Territory had availed themselves of the only way left in which to express their will in the premises, to wit: by holding an election without the Governor's authorization,—therefore they were entitled to the admission of their delegate.

This issue capped the climax of the People's victory. The Liberal candidate, Judge Van Zile,—a part of whose business at the



## CHAPTER IX.

1883-1885.

ANOTHER GREAT RAILWAY ENTERS UTAH—THE RIO GRANDE WESTERN AND ITS BRANCHES—THE CAPITALS OF UTAH AND COLORADO UNITED—THE SALT LAKE CITY RAILROAD—MURDER OF CAPTAIN BURT—MASSACRE OF MORMONS IN TENNESSEE—ELDER NICHOLSON'S LECTURE ON THE TRAGEDY—POLITICAL EVENTS OF 1884-5—JOHN T. CAINE RE-ELECTED TO CONGRESS—REJOICINGS OVER THE ELECTION OF CLEVELAND AND HENDRICKS—THE YOUNG DEMOCRACY.

**B**EFORE passing to the consideration of matters more closely connected with the interesting and exciting epoch upon which we are about to enter, it will be well to note certain events which cannot be so conveniently treated in a future chapter, and the omission of which would render this record incomplete. The first was of a commercial rather than a political character, though it cannot be denied that it had an ultimate bearing upon the politics of the Territory. In a purely commercial light, however,—since commerce no less than politics is a legitimate theme of history—it is of sufficient import to entitle it to a prominent place in these pages. We refer to the advent into Utah, and particularly into Salt Lake Valley, of the Denver and Rio Grande Western Railway.

This notable event—the uniting by rail of the capital cities of Utah and Colorado—took place in the spring of 1883. It may be regarded as second only in importance—so far as railroads in this region are concerned—to the original advent of “the iron horse” upon the shores of America's Dead Sea.

Since the driving of the last spike at Promontory in May, 1869, the Union Pacific and Central Pacific companies—those great corporations to whose herculean efforts the wonderful achievement of a transcontinental highway is due—had held, save for brief periods

of independence enjoyed by local roads subsequently constructed, an almost unbroken monopoly of the railroad business of Utah. This was especially true of the Union Pacific, which speedily acquired control or possession of most of the smaller roads, its feeders and tributaries, and reigned in virtual sovereignty, master of the situation, for a period of fourteen years. A powerful competitor then entered the field—one that could not be ignored by its gigantic rival—and a new era in Utah's commercial life began. The new road conferred immediate benefit upon the Territory. Passenger fares and freight rates were reduced, the development of the material resources of the region was greatly stimulated, and the enhancement of the general prosperity of the commonwealth was marked.

The beginning of the Rio Grande Western Railway—such is its present title\*—was the natural outgrowth of the Denver and Rio Grande Railway system in Colorado, which had penetrated the mountains to the south and west of Denver, rendering accessible the great mining camps of that State. The brain of the system was General William J. Palmer, who, ably seconded by his lieutenants, David C. Dodge and William A. Bell, turned his studies during 1880 in the direction of Utah. In 1881 the work of constructing the line from the western Colorado border was begun and vigorously prosecuted to Salt Lake City; the last rail being laid at Desert Switch at four o'clock in the afternoon of Friday, March 30, 1883.

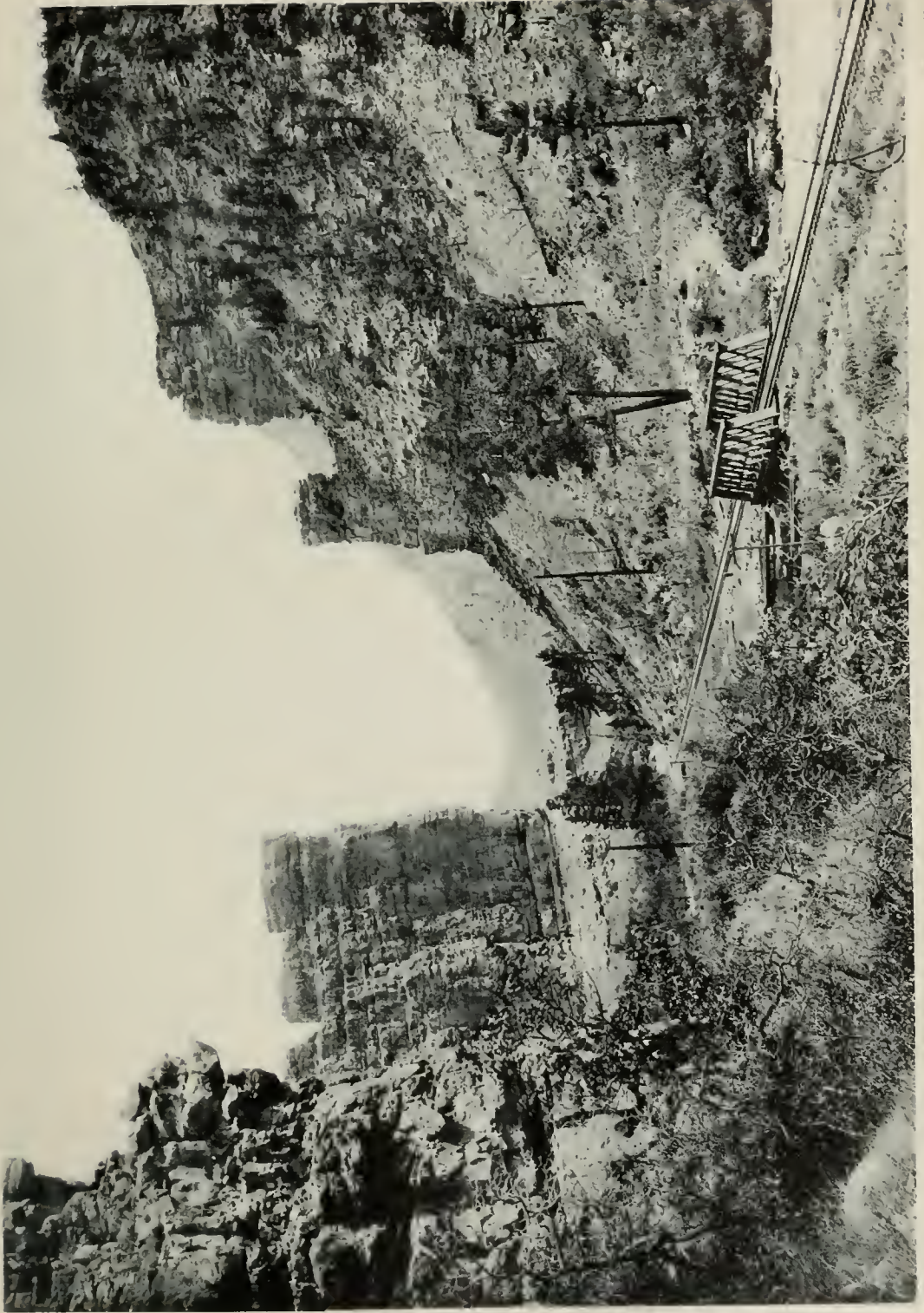
The *Deseret News*, commenting upon the completion of the line to this point, said:

The event occurred without the great display and outward rejoicings usual on such occasions. It is a matter of no less importance on that account, however, being next in magnitude, so far as railroad affairs in this region are concerned, to the completion of the Central Pacific and Union Pacific lines, causing the spanning of the continent from sea to sea by the iron-banded highways.

Salt Lake City, however, was not to be the terminus of the road. The plan was to extend it to Ogden, the eastern terminus of the

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\* The abbreviation of its original title took place at the reorganization of the company in 1889.



W. H. JACKSON, PHOTO

# CASTLE GATE.

PRESS OF CHICAGO PHOTO ENGRAVING CO.





Central Pacific; thus establishing a through route, independent of the Union Pacific, between the East and California. Work between Salt Lake City and Ogden was begun forthwith and pushed to completion with all possible dispatch. This section of the road, paralleling the old Utah Central—as the section between Springville and Salt Lake parallels the old Utah Southern—was completed and opened for business early in the ensuing May.

The Rio Grande Western road enters Utah a few miles south of the great escarpment called the Book Cliffs. It passes over a most uninviting country, with a clay soil and little vegetation, from Grand Junction to Sunnyside. Here it begins to enter a fertile valley among some mesas, and nine miles farther, at Castle Gate, it reaches the perpendicular escarpment and enters the road range, following up Price River Canon till that gorge opens out into Pleasant Valley, at its head. It then ascends this high plateau and crosses the range at Soldier Summit, about 7,464 feet above the sea. Thence it descends Spanish Fork River, passing through the Wasatch at Spanish Fork Canon, thence out into Utah Valley, circling around Utah Lake along the line of fringing settlements to the lower end, where it follows the Jordan River for a few miles and then enters Salt Lake Valley. It traverses the center of this valley to Salt Lake City, and thence runs northward to Ogden. It derives its surname, "The Scenic Route" from the many beauties and wonders of nature through which it passes.

The general feeling in Utah over the advent of the new railroad is reflected in the following paragraphs of an editorial article in the *Deseret News*:

The Denver papers are having a great deal to say about the Denver and Rio Grande Railroad and its connection with Salt Lake and Ogden. Some sensible remarks are made and some not so sensible. It is conceded that Utah will, by means of the new line, obtain control of the grain and vegetable trade with western and south-western Colorado, and perhaps of other branches of business. But the fear that the new road will discriminate in freight for the special benefit of Utah dealers and against the Denverites, appears to us illfounded and unreasonable. Also the notion that special efforts will be made in favor of the "Mormons" seems to us groundless and absurd.

The *Denver Tribune* publishes the opinions of several merchants on the subject, but editorially takes no stock in the complaints against the Denver and Rio Grande, which it declares "has been the best railroad friend Colorado has ever had." The *Times*, however, says that "the Rio Grande does not look for any of the Gentile trade" of Utah, but is making "diplomatic moves to secure the friendship of the Mormons, who naturally look to it as an ally against the Union Pacific and the Gentiles alleged to be equally opposed to polygamy." One of these "diplomatic moves" is mentioned, namely, giving its contracts for construction to "Mormons."

The *Times* shows very little knowledge of Utah railroad history, and very little common sense in regard to the sentiments of corporations. What do any of them care about "Mormonism" or polygamy? They are looking after profits. We have no idea that the Rio Grande people, either in letting out construction contracts or making overtures for trade on their road, entertain any peculiar friendship for the "Mormons" or contemplate any discrimination in their favor. And the Union Pacific, which the *Times* imagines to be hostile to the "Mormon" Church, was built just as much by "Mormon" labor as the Denver and Rio Grande. It is quite a mistake to suppose that there is either hostility on the part of the U. P. or alliance on the part of the R. G. with the "Mormons" in any way. The whole affair is to be looked at from a business point of view, and that alone.

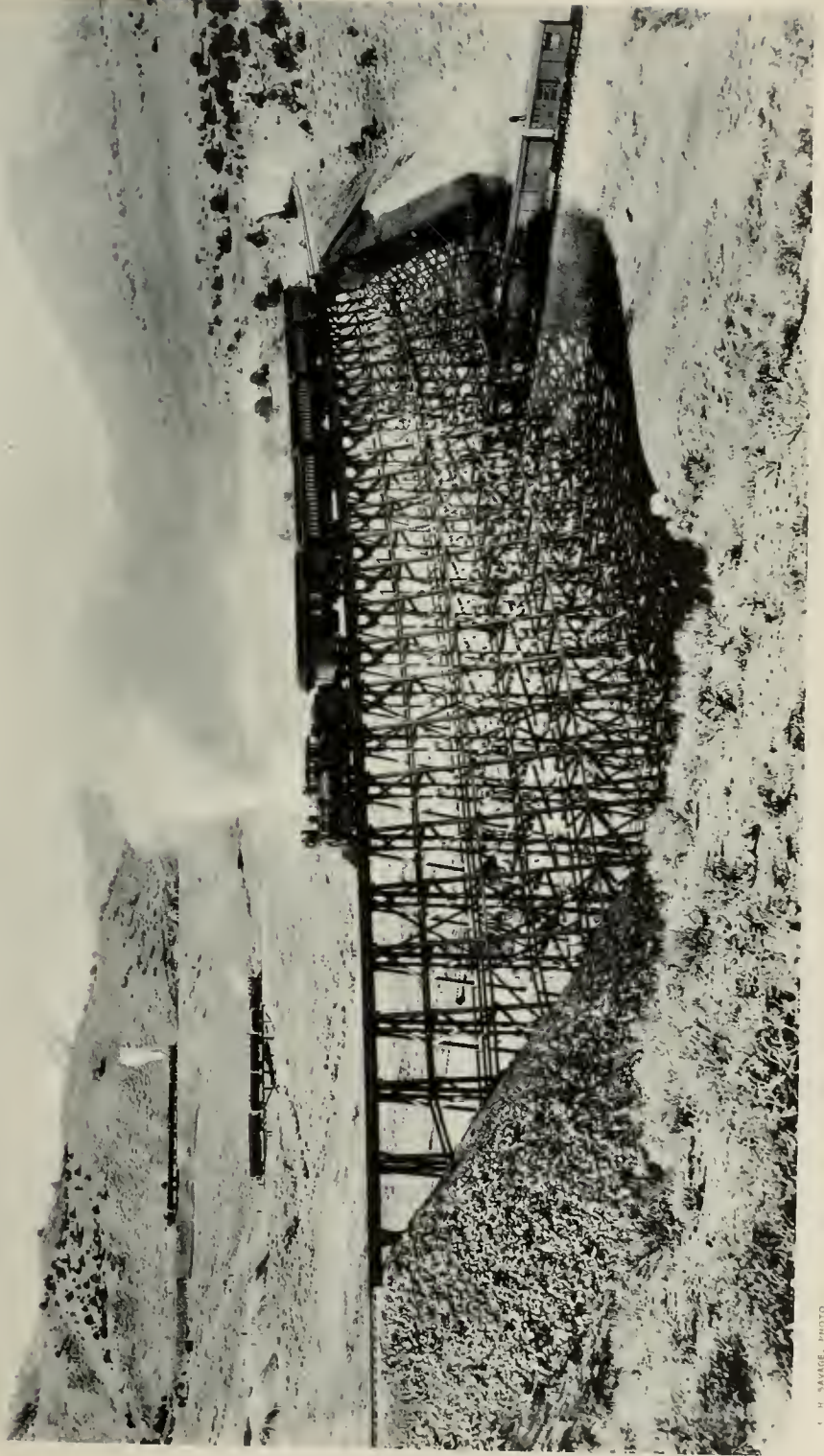
Competition in the railroad line will no doubt prove as beneficial to Utah as to other sections of the country. The road which offers the best facilities and rates to patrons will gain their trade. One road will doubtless prove the more advantageous to some shippers and buyers, and the other road to others. There will be trade enough for all. Utah is bound to grow and advance in business of every kind, and whichever road gains the greater patronage will obtain it on business principles, into which mere sentiment will not enter. It will be neither "Mormon" nor "Gentile" distinctively—it will be neither Union Pacific nor Rio Grande as a matter of friendship or hostility. There is room for both roads and traffic also and we wish them both success.

The Rio Grande Western was originally a narrow-gauge line. Hence its other surname—"The Little Giant." Later, its business having demonstrated the necessity of a closer tie between its connections East and West, for the purpose of handling more efficiently its increasing through traffic, and preventing or postponing the building of parallel and rival lines, it was determined to broad-gauge the road. The necessary funds were promptly raised and the work forwarded to a finish.\*

While upon the subject of railroads, it is proper that we should

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\*This, however, was not until May 10, 1890. In another place we shall treat further of the subject of the road's development. Suffice it now that in 1893 the length of the main line and its branches was as follows:



H. SAVAGE, PHOTO

THE DOUBLE CIRCLE ON EUREKA BRANCH. R. G. W. R. Y. UTAH



say something of Utah's pioneer street-car line. This was no other than that popular and flourishing system, the Salt Lake City Railroad, which has done so much to annihilate time and space along the streets of the inter-mountain metropolis.

The company which inaugurated this enterprise was organized on the 24th of January, 1872. A preliminary meeting of its projectors had been held on the 19th of that month at the law office of Williams and Young, where it was decided to effect the organization. There were present at this meeting Brigham Young, Jr., William B. Preston, Seymour B. Young, Moses Thatcher, John W. Young, John N. Pike, Le Grand Young, Parley L. Williams, William W. Riter, and Hamilton G. Park. To these gentlemen belongs the distinction of establishing our first street railroad. The capital stock subscribed was \$180,000, ten per cent. of which was paid in at the preliminary meeting. A board of five directors was chosen, namely, John W. Young, Brigham Young, Jr., Le Grand Young, William W. Riter and

Main Line	-	-	-	-	-	328.40
Branches:						
Bingham Junction to Bingham	-	-	-	-	-	14.15
Bingham Junction to Wasatch	-	-	-	-	-	10.06
P. V. Junction to Coal Mines	-	-	-	-	-	19.30
Thistle to Manti	-	-	-	-	-	60.80
Lake Park Spur	-	-	-	-	-	1.50
Union Stock Yards Spur	-	-	-	-	-	1.05
Copper Plant Spur	-	-	-	-	-	.87
Diamond Quarry Spur	-	-	-	-	-	1.40
Jennings Quarry Spur	-	-	-	-	-	2.70
						111.83
Sevier Railway:						
Manti to Salina	-	-	-	-	-	25.70
Tintic Range Railway:						
Springville to Mammoth including spurs	-	-	-	-	-	52.04
Total miles operated	-	-	-	-	-	517.97
Tramways:						
Wasatch to Alta (Narrow gauge)	-	-	-	-	-	7.80
Bingham to Mines (Narrow gauge)	-	-	-	-	-	3.50
						11.30
Total miles owned and operated	-	-	-	-	-	529.27

John N. Pike. The directors chose as their president, John W. Young; as vice-president and treasurer, Brigham Young, Jr.; as secretary, William W. Riter. Subsequently John W. Young was elected general superintendent.

A right of way for the Salt Lake City Railroad was granted by the City Council on the 26th of April of the same year. The original franchise was for the construction and operation of a line from the Utah Central--now Union Pacific--depot, eastward along South Temple Street to the Fort Douglas military reservation, with such deviations and branches on adjoining streets as the demands of travel might require. The line, as built, was from the Utah Central depot eastward to the Valley House, where it left South Temple Street and ran south one block to the Continental Hotel; thence turning east to Main Street, thence south on Main to the Clift House, and thence east as far as the Benedict property in the Ninth Ward. By the time it had reached that point a branch line to the Warm Springs was in operation, and others followed in due season. The first one and a half miles were reported by the Superintendent as completed, in running order and open for traffic, on the 17th of July, six months after the inception of the enterprise.

On the 4th of January, 1876, the company obtained from the City Council its celebrated "blanket franchise," giving it the right of way along any street in Salt Lake City. It was this grant that ultimately brought the pioneer line into collision with its influential rival, the Salt Lake Rapid Transit Railway.

Horse power was originally employed by the pioneer line, and it continued to be used until August 17, 1889, when electricity was substituted. This change necessitated an entire re-equipment of the road; the building of power houses, the purchase of machinery, new rails, new cars, poles, wires, and in short all the varied paraphernalia requisite to the great improvement. The cost was immense, but the men and means were at hand to meet it.\*

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\* On April 16th of that year a new board of directors had been elected. They were Francis Armstrong, Alfred W. McCune, Walter P. Read, Adam Spiers and Henry







The road was a paying investment from the start, though the dividends during the horse-power period, when the service was more or less scant—the arrival and departure of cars at certain points being something in the nature of “angels’ visits, few and far between,”—were not heavy. After the adoption of electricity as the motive power, and the institution of a service first-class in every respect, the business increased wonderfully and justified the company in extending its lines and adding improvements from year to year. To these purposes, from the beginning, the profits of the Salt Lake City Railroad have been mainly applied.

It should also be stated that this line has always maintained its independence; never having passed into the possession of any of the great corporations which have swallowed up so many of the Utah roads.

In the summer of 1882, the local railroads were listed by the *Utah Commercial* as follows:

## STANDARD-GAUGE LINES.

Union Pacific (main line)	-	-	-	-	78 miles
“ “ Utah Central and Utah Southern branch	-	-	-	-	280 “
“ “ Salt Lake and Western branch	-	-	-	-	55 “
“ “ Echo and Park City branch	-	-	-	-	27 “
Central Pacific	-	-	-	-	148 “
Total	-	-	-	-	588 “

## NARROW-GAUGE LINES.

Union Pacific—Utah and Northern branch in Utah	-	-	-	-	75 miles
“ “ Utah and Nevada branch	-	-	-	-	37 “
Sanpete Valley	-	-	-	-	28 “
Utah Eastern	-	-	-	-	28 “

Dinwoodey. Mr. Armstrong became president. Mr. McCune vice-president. Mr. Read superintendent, Heber M. Wells treasurer, and Joseph S. Wells secretary. A franchise for an electric road had been granted in the previous February. In May the purchase of the electric plant was decided upon. The cost of the improvement and of subsequent extensions of the road, which in 1892 comprised forty-two miles of track, was a million dollars. Most of the gentlemen named, some of whom are among Utah’s foremost financiers, are still officers of the road. The author is especially indebted for information concerning it to Superintendent Read—who succeeded Orson P. Arnold in that position—and to Joseph S. Wells, the intelligent and obliging secretary.

Denver & Rio Grande Western, main line to summit of Wasatch	90 miles
“ “ “ “ Pleasant Valley branch, Tucker to Scofield - -	20 “
“ “ “ “ Bingham branch (16 miles) and tramways (8 miles) -	24 “
“ “ “ “ Wasatch and Jordan Valley branch (7 miles) and tramways (7 miles) - -	14 “
Total - - - -	316 “

Passing over many minor incidents that happened about that time, this history should mention two events that agitated the community to an unusual degree.\* Both involved deeds of blood, and caused general sorrow throughout Utah.

The first was the murder of Captain Andrew Burt, Marshal and Chief of Police of Salt Lake City; a brave and capable officer and a man highly esteemed in the community. He was shot and killed by a negro desperado named Joseph Samuels, whom he was in the act of arresting for a disturbance of the peace. Officer Charles H. Wilcken was dangerously wounded at the same time. The assassin was armed with a Winchester rifle, while the officers—both intrepid men—were without weapons. The killing occurred on the 25th of August, 1883. Half an hour after the death of Captain Burt his murderer was lynched by a mob of infuriated citizens.

The other event was a tragedy more terrible still—one in which five men were killed and a woman seriously wounded. It occurred in the State of Tennessee, but two of the men were citizens of Utah. We refer to the Cane Creek massacre of August 10, 1884.

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\*An important event in musical circles was the visit of the great Patti, who, assisted by Mapleson's grand chorus, sang in the Mormon Tabernacle at Salt Lake City on the evening of April 1st, 1884. Among other notables who visited Utah during the early eighties were Benjamin Harrison, afterwards President of the United States. Henry Ward Beecher, Pere Hyacinthe, Senator John Sherman. Albert Bierstadt the artist, and Governor Thomas A. Hendricks, of Indiana. Among the prominent decedents of that period were Hon. John M. Bernhisel and Hon. William H. Hooper, ex-Delegates to Congress; Apostles Orson Pratt and Charles C. Rich; President Joseph Young, Bishop Edward Hunter and General Thomas L. Kane. The last-named died at Philadelphia



L. W. SAFFER PHOTO.

DEVIL'S GATE, WEBER RIVER.



William S. Berry and John H. Gibbs were two of several Mormon missionaries, who, in the summer of that year, were preaching and proselyting in Tennessee. Cane Creek, the scene of their murder, is a small stream rising in the north-eastern part of Lewis County. The Cane Creek settlement contained only twenty or thirty houses, and was situated sixteen miles south of Centerville, Hickman County, a station on the line of the Nashville and Tuscaloosa Railway.

In the spring of 1884 Elder John H. Gibbs was assigned to that field, and as the result of his untiring efforts a score or more of souls were added to the Church. An amiable and intelligent young man, exemplary in every respect, he was an able speaker and a most efficient missionary. He was about thirty-one years of age.

The success of the Elders on Cane Creek had awakened against them the usual opposition, and there, as in other parts of the South, a very bitter feeling prevailed. The great Anti-Mormon agitation which had swept over the country, causing the recent action by Congress on the Utah question, had not subsided, and its influence had penetrated to the quiet and sequestered region where Elder Gibbs was laboring.

The feeling against the Mormons became so intense, not only in Tennessee but in the parts adjacent, that the presidency of the Southern States Mission finally concluded to send two Elders on a special lecturing tour through that region. They were instructed to call upon the leading citizens, wherever they went, and give them correct information regarding Utah and her people, socially, politically, and religiously. The choice fell upon Elders John H. Gibbs and William H. Jones, the former from Paradise, Cache County, and the latter from Brigham City, Box Elder County, Utah.

Traversing several counties in Tennessee and Mississippi, and returning to the former State, they arrived, about the 7th of August, at Cane Creek, where they had an appointment to preach on the following Sabbath. They there met Elders William S. Berry and Henry Thompson, who were visiting the Latter-day Saints in that vicinity.

Elder Berry was a man of mature years, aged about forty-six :

modest and unpretentious, not gifted as a speaker, but wise in counsel and prudent in word and deed. His disposition was gentle and his life irreproachable. He was a native of Tennessee, but resided at Kanarra, Iron County, Utah. Elder Thompson was from Scipio, Millard County.

The place appointed by the Elders for their meeting was the house of James Condor, a well-to-do farmer, who, several years before, had become identified with the Mormon Church. His wife, Melinda Carroll Condor, his son Martin, his daughters Rachel and Lovisa, and J. Riley Hudson, Mrs. Condor's son by a former marriage, had but recently been baptized. Young Hudson was about twenty-seven, and Martin Condor nineteen or twenty years of age. Most of the people living near Condor's were Mormons. An exception was Thomas Garrett, formerly sheriff of Lewis County, who was very friendly to the Elders and much impressed with their religion.

Many of the settlers, living farther away, were extremely hostile. In May of this year a mob had burned the Mormon meeting-house—a log building erected by the Saints—and since that time they had been holding services in private dwellings.

The hour set for the meeting at Condor's was eleven o'clock in the forenoon of Sunday, August 10th. An hour or two before the time appointed, Elders Gibbs and Thompson, leaving the hospitable home of Mr. Garrett, proceeded on foot about a mile down the creek to the house of Mr. Condor. They there joined Elder Berry and a number of their little flock, who with others had come to attend the meeting. To while away the time until the hour of eleven, the Elders, at the request of their friends, sang several hymns.

Elder Jones, after the departure of Elders Gibbs and Thompson, remained at Mr. Garrett's long enough to finish reading a discourse published in the *Deseret News*, which he had received from home. Having completed the perusal, he followed his companions down the creek. He had walked for half or three quarters of a mile, when, from the woods fringing a cornfield at one side of the road, a band of



W. B. SAUNDERS, PHOTO

STEAMBOAT ROCKS, ECHO CANYON. U. P. R.'Y.





armed men rushed upon him. They were twelve or fifteen in number, and all wore masks. They compelled him to climb the fence at the roadside, and after searching him, forced him, at the pistol's point, through the field and into the forest. Having questioned him concerning the whereabouts of his fellow missionaries, especially Elder Gibbs, and received no definite answer, the main body of the mob, leaving four of their number to guard the prisoner, started down the creek. They soon returned, however, and again subjected their captive to a close examination. Finally, all but one departed, taking the same direction as before; the man who remained to guard Elder Jones having been ordered to shoot him if he attempted to escape.

A conversation ensued, during which the guard, a large man, with a silver-mounted, double-barreled pistol, told the Elder that he was not in sympathy with the murderous designs of his associates and that he intended to let him go. "I'll kill you, though," he added, "if you act unfair." He then ordered him to walk ahead, a behest which the Elder obeyed.

They had gone but a short distance through the woods when a gun-shot was heard in the direction of the Condor farm. They paused a moment, and several other shots were fired in rapid succession, and soon a whole volley shook the air. "My God!" exclaimed the man, "they are shooting among the women and children; don't you hear them scream?" The Elder was now told to run, and did so, the guard following him, pistol in hand, until they struck the road. There they parted company, the man first having directed his quondam captive toward Shady Grove, in the adjoining county of Hickman, where there was a branch of the Mormon Church. Elder Jones reached there in safety next morning.

The shots heard just prior to his liberation were fired, all but one, by the armed mob which had previously made him their prisoner. As the result, four men now lay dead, and a woman dangerously wounded, at the farm-house of James Condor.

We have seen how Elders Gibbs, Berry and Thompson, after reaching the Condor farm, and while waiting for their congregation to

assemble, began singing hymns for the edification of those who had already arrived. Elder Gibbs had just taken up his Bible to select a text for a sermon, when a shout from Mr. Condor, who had been standing at his front gate, startled all. Looking towards him, they saw him struggling desperately in the hands of several men, while others were rushing towards and surrounding the house. It was the mob, which had left Elder Jones and his guard in the woods, half a mile away. They still wore their masks, and were armed with guns and pistols. "Get your guns," shouted Condor to his boys, both of whom were in the orchard. They needed no second bidding. Springing for the back door, Martin reached it just as the leader of the mob, having entered at the front, and crossed the room, was in the act of taking down from the hooks where it hung suspended over the door, a shot-gun, the boy's own weapon. A fierce struggle for its possession took place, during which the mobber—one David Hinson—drew a pistol and snapped it in Martin's face. The youth recoiled, whereupon Hinson, securing the gun, aimed it at Elder Gibbs and fired. The shot took effect under the arm and the murdered man, clutching the wound, sank down at the side of a bed and died.

A gun was then leveled at Elder Thompson, but Elder Berry, who was large and powerful, seizing the barrel, turned the muzzle away from his friend. While holding the weapon as in a vise, but making no further effort to secure it, he was set upon by two other mobbers, who leveled their guns at him. He bowed his head, received both shots in the abdomen, and fell to the floor, expiring without a groan.

Meantime Elder Thompson had fled from the house and to the woods.

No sooner had Elder Gibbs fallen, than Martin Condor renewed his struggle with Hinson for the possession of the shot-gun. At this juncture some of the latter's followers shot and killed the heroic boy, whose antagonist then retreated.

At the very beginning of the scene of violence, young Hudson had entered from the back-yard and while his brother was struggling

with Hinson, had climbed into the loft to get his gun. He descended just in time to see Martin writhing in his death agony and the murderer of his friend Gibbs stepping out at the front door. Flinging aside, as with the strength of a lion, two of the masked ruffians who seized and sought to stay him, he leaped to the door and shot Hinson dead in the presence of his followers. They returned the fire, mortally wounding the brave youth, who died an hour later. After Hudson fell the mob approached the house in a body and poured a volley in at the window, seriously wounding Mrs. Condor in the hip, and riddling the dead body of Elder Berry. They then retired, taking with them the corpse of their leader.

The people, men, women and children, who had fled terror-stricken to the woods, now returned to the scene, so tranquil an hour before, so awful in its sudden transformation. With many tears and wailings the dead bodies of the Elders and the young heroes who had laid down their lives in a vain attempt to save the lives of their friends, were tenderly prepared for burial. They were laid side by side in mother earth, the interment taking place on the 11th of August.

Tidings of the tragedy were telegraphed to Elder B. H. Roberts, acting president of the Mission, at Chattanooga, and by him wired to President John Morgan, at Salt Lake City. Elder Roberts, assisted by Elder Jonathan G. Kimball and others, in and out of the Church, took immediate steps to recover the bodies of the murdered missionaries, that they might be sent to Utah. It was a perilous undertaking, especially for Elder Roberts, who went in disguise to the scene of the crime, but he accomplished the errand successfully. Elder W. E. Robison was released to take the bodies home. He started for Utah early on the morning of August 20th, going by way of St. Louis, Kansas City and Pueblo.

All Utah was profoundly moved by the terrible tidings of the massacre, and as the train bearing the bodies proceeded northward through the settlements, sympathetic and sorrowing multitudes assembled at the stations to pay fitting tributes to the dead. All

along the route draped flags floated at half mast, and bands played funeral dirges. At Provo the box containing the body of Elder Berry was transferred to the Utah Central Railway and conveyed southward to Milford. Thence it was taken by team to Iron County, and delivered to his family.

The D. and R. G. train reached Salt Lake City about half past five o'clock in the afternoon of August 22nd. Here a multitude, headed by President Joseph F. Smith, Apostles Wilford Woodruff and Franklin D. Richards, had assembled. The box containing the body of Elder Gibbs was lifted from the train and placed upon the platform long enough for the people to view it. It was then replaced in the car and taken northward, to its destination.

Memorial services in honor of the martyrs were held simultaneously at Paradise, Cache County; at Kanarra, Iron County; and in the Tabernacle at Salt Lake City, on Sunday the 24th of August. The speakers were the First Presidency, members of the Council of the Apostles and other Elders.

Among the notable expressions called forth by the Cane Creek tragedy was a lecture by Elder John Nicholson on "The Tennessee Massacre and its Causes," delivered to a large audience at the Salt Lake Theater, on the evening of September 22nd. It was a masterly effort in its line, and for nearly three hours the speaker held the undivided attention of his hearers.

The press of the country teemed with comments upon the massacre, most of the leading papers denouncing the horrid deed and demanding that justice be done upon its perpetrators. Justice was not done, however, though commendable efforts to that end were made by the officials of the State of Tennessee. A reward of a thousand dollars, offered by Governor W. B. Bate for the apprehension of the murderers, or for information leading to their identification and capture, utterly failed of its purpose. In fact, the Anti-Mormon feeling increased rather than diminished, as the result of this action, and in different parts of Tennessee and the South, Mormon Elders were mobbed. The sentiment became so hostile at Cane Creek and in its

vicinity that those who had befriended the Elders were finally compelled to leave the State.

November 4, 1884, witnessed the recurrence of the regular election for Delegate to Congress. The People's party were again victorious, returning Hon. John T. Caine to Congress by a vote of 22,120 to 2,215; the latter being cast for the Liberal candidate, Captain Ransford Smith, of Ogden. Neither party polled as large a vote as at the election two years before.

The triumph of the National Democracy in the fall of 1884, resulting in the election of Grover Cleveland as President of the United States, was the occasion of a grand popular demonstration at Salt Lake City and in other parts of Utah. It was the night of November 8th. Bonfires blazed, rockets soared, bands played and cannon roared, while monster meetings were addressed by Mormon and non-Mormon orators,—such as were willing to affiliate for the purpose. The principal gathering was in front of the City Hall, Salt Lake City, where the multitude thronged the street and the speakers held forth from the balcony. Among the latter were Mayor Jennings, Delegate Caine, Judge Dusenberry, Messrs. Aurelius Miner, Hadley D. Johnson, T. V. Williams, T. B. Lewis, S. A. Kenner, H. J. Faust, J. M. Benedict, and S. P. McKee; the last-named representing the Afro-American Democrats. Another meeting, held in front of the Salt Lake *Herald* office, was addressed by S. R. Thurman, Byron Groo, S. A. Kenner and D. C. Dunbar. It was a remarkable occasion. No previous Presidential election had caused in Utah anything approaching so spontaneous and enthusiastic an outburst of general rejoicing. Hitherto, the local Democratic and Republican organizations, composed of non-Mormons, had met as often as necessary and elected delegates to the National Conventions, but their proceedings were only of nominal import, and of no interest whatever to the masses of the people. Here, where no vote could be cast for President, and burning local issues absorbed the public mind, political battles had been fought, not between Democrats and Republicans, but between Mormons and Gentiles, and outside parties and

national questions had been almost entirely ignored. But now came the awakening,—the grey dawn of a new day that was gradually breaking over Utah.

During the great jubilation, Delegate Caine, who presided at the City Hall meeting, and had been acting for some time as a member of the Democratic Congressional Campaign Committee, sent the following telegram to the President-elect:

SALT LAKE CITY, UTAH,  
November 8, 1884.

*To Hon. Grover Cleveland, Albany, New York:*

Ten thousand citizens of Salt Lake tonight are enthusiastically celebrating your election. Their joy is as sincere and honest as their jollification is demonstrative. We heartily greet you because of our confidence that your administration will be as pure and glorious as has been your administration in the Empire State, which has sustained you in the great struggle just ended. Accept our warm congratulations.

JOHN T. CAINE, Chairman.

The Gentile Democrats, as a body, had no part or lot in this matter. The Anti-Mormon spirit was too strong at that time to permit any affiliation. They met at the Walker Opera House on the evening of November 19th and ratified the election of Cleveland and Hendricks. Speeches were made by Judge Rosborough, Captain Ransford Smith, Mr. P. L. Williams, Judge Sutherland, Hon. Thomas Marshall, Professor L. E. Holden and Judge Canfield. Judge Sutherland's address was exceptionally able and interesting.

Meantime had been born an evanescent political movement christened by its creators "The Young Democracy." It had taken steps, on the 12th of November, towards organizing the Democratic Club of Utah, which was meant as a rallying point for the young men of the Territory whose views were such that they could not conscientiously train either with the Liberals or with the People's party. The leading spirits of the organization were Joseph L. Rawlins, Alfaes Young, Ben Sheeks, Frank Jennings, John M. Young, John H. Burton, Joseph T. Kingsbury, L. S. Hills, A. L. Williams, Herbert Pembroke, George A. Mearns, and others. A number of veterans, such as Judge Sutherland, Theodore Burmester, Bolivar Roberts,

and C. R. Barratt, also connected themselves with the cause. But the movement was not popular. It was in fact premature. A precarious, Ishmaelitish existence, extending through two or three years, during which the club started a paper called the *Salt Lake Democrat*, whose hand, if not "against every man," certainly dealt blows in all directions—in consequence of which it made few friends and many foes—was followed by the inevitable collapse. After the general election in 1885, when "The Young Democracy" put its first ticket in the field—which, with all other opposition, was "snowed under" by the People's party—the new movement gradually dwindled and died—fell asleep to await the political resurrection that came a few years later, when Mormons and Gentiles, dropping party feuds and differences, affiliated in politics and divided on national party lines as Democrats and Republicans.

## CHAPTER X.

1884.

CHIEF JUSTICE ZANE ARRIVES IN UTAH—HIS PAST RECORD AND THE PROSPECT CONFRONTING HIM—OTHER FEDERAL OFFICIALS OF THAT PERIOD—PRESIDENT TAYLOR PREDICTS "A STORM"—THE FIRST MUTTERINGS OF "THE CRUSADE"—ANNIE GALLIFANT'S IMPRISONMENT—THE BELLE HARRIS EPISODE—RUDGER CLAWSON'S ARREST—NELLIE WHITE'S INCARCERATION—THE SITUATION IN THE THIRD JUDICIAL DISTRICT—"CLEARING THE DECKS FOR ACTION"—THE APRIL AND SEPTEMBER GRAND JURIES—OBSTACLES IN THE WAY OF EMPANELING—JUDGE ZANE GRANTS AN OPEN VENIRE.

**W**HILE all Utah was ringing with the dreadful news of the massacre of the Mormon missionaries and their friends in Tennessee, and just one day after the train bearing the bodies of the murdered Elders reached its destination, there arrived at Salt Lake City a man whose remarkable career in these parts as a representative of the Federal Government will form much of the matter of the remaining portion of this volume. That man was Hon. Charles S. Zane, late of Springfield, Illinois, who had recently been appointed Chief Justice of this Territory.

The wonderful changes following and in part flowing from Judge Zane's administration might induce in many the belief that he was an instrument of Destiny, and that he came to Utah with a special mission from the Government; a mission for which he had been carefully chosen and vested with extraordinary powers. Indeed, he was more than once styled "a mission jurist," and, like Judge McKean, whom he was supposed at one time to be ambitiously emulating, was charged with having as his object the overthrow of Mormonism as a religion.

That something of this kind was desired by Judge McKean, who was a religious enthusiast, many still believe. A man who could





*Robert M. Quenne*



say and feel, as he did, that God had given him a mission in Utah as high above his office of Federal Judge as heaven is above earth, and that whenever the laws of the United States conflicted with his ideas of duty he would unhesitatingly trample them under his feet, was just the one to cherish such a design and if possible put it into execution. Moreover, Judge McKean, unless report belied him, owed his appointment to ecclesiastical influence, exerted in his behalf by Dr. John P. Newman, the reputed spiritual adviser of President Grant.

Of Judge Zane, who faced a situation similar in many respects to that of his ill starred predecessor, and engaged with equal zeal in a crusade against a certain feature of the Mormon faith and practice, little if any of this could truthfully be said. In the first place, he was not "a religious man;" he professed no creed, and was interested in the advancement of no particular church. Not that he was an atheist; he had faith in a Supreme Being, and in the eventual triumph of truth and justice. He was zealous for what he believed to be right, and as persistent in opposing what he believed to be wrong. A thorough American, a Republican in politics, he was a staunch advocate of "a strong government" and the strict enforcement of the law. If, in his views of law and government, as based upon the Constitution, he leaned to the doctrine of "inherent and implied powers," in preference to that of "strict and literal construction," it was but natural considering his political training and affiliations. To this, and not to a religious motive—though his traditions were necessarily Christian, and his predilections Occidental rather than Oriental—is referable his attitude and acts in relation to polygamy, with which, as a legal and social problem, it was his lot to wrestle. Whether or not he was predestined to such a task, let fatalism declare. Your true Latter-day Saint acknowledges God's hand in all things.

Judge Zane's appointment seems to have come in the ordinary course of events; no Jesuitical influence securing him the office, and no Star Chamber council at Washington instructing him how to discharge its functions. The case in a nutshell is this: The Govern-

ment was determined to suppress the practice of polygamy in the Territories; a law had been passed by Congress to that end, and the Federal officials in Utah were under obligations to enforce it. A vacancy occurred in the Chief Justiceship of the Territory, and Charles S. Zane, being considered a proper man for the place, was sent to fill it. Not that the appointment came independently, without the usual intervention of powerful friends and their influence; but it came, according to his account, without his solicitation or seeking. Following is a brief biographical sketch of Utah's most famous Chief Justice:

Charles Shuster Zane, son of Andrew and Mary Franklin Zane, was born in Marsh River Township, Cumberland County, New Jersey, March 2, 1831. His mother was a distant relative of the great Franklin, "the philosopher of the thunder bolt." At the age of nineteen, he left the paternal roof and journeyed to Illinois, which State had witnessed, four years previously, the exodus from its borders of the expatriated community that were the pioneers and founders of Utah. Little thought young Zane that his fate and that of the exiled Mormons were destined to meet in any way, much less in the manner that gave him so much notoriety, and added so many stirring pages to their eventful history.

His elder brother, John, had migrated to the West as early as 1838; the year whose close witnessed the Mormon troubles in Caldwell and Daviess counties, Missouri, and the beginning of the exodus of the Saints from that State. Charles joined his brother in Illinois, and settled first at Richland, Sangamon County, where he engaged in farming and brick-making. In the fall of 1852 he entered McKendry College, which he left three years later to teach school. In his leisure hours he read law. Subsequently he entered the office of James C. Conkling, a prominent lawyer of Springfield.

Among the chief lights in the legal firmament of the Illinois capital at that period was Abraham Lincoln, the future President of the United States. Young Zane had previously applied to Mr. Lincoln for a situation, but he, having already a student in his office, advised him to go to Mr. Conkling. In the spring of 1857 he was

admitted to the bar, and opened an office over that of Mr. Lincoln and his partner, Mr. Herndon. The following year he was elected City Attorney of Springfield, and was re-elected in 1861 and in 1865.

The momentous year that witnessed Lincoln's inauguration as President and the outbreak of the Civil War, saw the installation of Charles S. Zane as that great man's successor in the law firm of Lincoln and Herndon. Though he did not himself enlist, he helped to raise troops for the war, assisting Captain George R. Webber, of the Commissary Department. He afterwards held the office of County Attorney of Sangamon County.

His partnership with Mr. Herndon continued until 1869, when he became a member of another legal firm, that of Cullom, Zane & Marcy. His partners were General Shelby M. Cullom, of "Cullom bill" notoriety, and George O. Marcy, Esq. This partnership ended when, in June, 1873, Mr. Zane was elected Judge of the Circuit Court, comprising the counties of Sangamon and Macoupen. He occupied that position six years and was then re-elected. The circuit in the meantime had been enlarged to include six counties, and two other Judges assisted him. Judge Zane was exercising the functions of that office when appointed by President Arthur Chief Justice of Utah.

This appointment was made on the 2nd of July, 1884. The position was obtained for him by the influence of his friend and former law partner, Senator Cullom. Hon. William M. Springer,—a Democrat, while Judge Zane was a Republican,—also helped to secure it for him. Indeed, it was Mr. Springer who first suggested it. Judge Zane had more than once turned his thoughts westward, viewing with interest the wonderful growth of the Pacific States and Territories, and pondering upon the possibility of one day uniting his fortunes with those of his fellow-citizens beyond the Rocky Mountains. Mr. Springer first spoke to him of an appointment in New Mexico, but subsequently—Judge Hunter's term drawing to a close—he suggested that there would soon be a vacancy in Utah. Judge Zane did not then close with the offer—if such it may be

called—and was surprised, shortly afterward, by the announcement that he had been named by the President for Chief Justice of this Territory. He concluded to accept the appointment, and after resigning his other office and arranging his affairs, set out for Utah, accompanied by his family.

He arrived at Salt Lake City on the 23rd of August, and took the oath of office on the 1st of September; the day that his resignation went into effect at Springfield. In a proclamation of that date he was assigned by Governor Murray to the Third Judicial District as its presiding magistrate. The seat of this District was still at Salt Lake City, where Judge Zane took up his residence.\*

The principal Federal officials of Utah at that period—those at least with whom this part of our narrative will have most to do—were Governor Eli H. Murray, Secretary Arthur L. Thomas, Chief Justice Charles S. Zane, Associate Justices Philip H. Emerson and Stephen P. Twiss, Marshal Edward A. Ireland, and District Attorney William H. Dickson. The first five having been mentioned heretofore, it but remains to say, of the others, that Mr. Ireland had been United States Marshal for Utah since April 12th, 1882, when he succeeded Colonel Shaughnessy in that office; and that Mr. Dickson had held the position of United States District Attorney since April, 1884, when he took the place vacated by Judge Van Zile. Mr. Ireland was from New York and was a personal friend of President Arthur. At the time of his appointment he was in business at Salt Lake City, making a specialty of the lamp trade. Mr. Dickson was a professional attorney and had resided in Utah about two years. A native of King's County, New Brunswick, Canada, he had acquired American citizenship and drifted westward to Nevada, where he practiced law, having as his partner Mr. Charles S. Varian. In 1882, just after forming this partnership, Mr. Dickson came to Utah, and, when Judge Van Zile retired, became an applicant for the U. S. Attor-

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\* There were but three Districts in the Territory at that time. The seat of the Second was at Beaver; that of the First at Provo and Ogden alternately.

neyship. Having secured it, he sent for his partner, Mr. Varian, who forthwith joined him and acted as his assistant in that office.

The general condition of society and state of the public mind in Utah at this period has been pretty well indicated. Mormons and Gentiles, at times friendly and sociable, were gradually "drawing the lines" more tightly than ever in places—"taking sides," and surveying each other with mutual suspicion and dislike. Congress, by its late drastic legislation, supplemented by the acts of the Utah Commission—which the Mormons regarded as partial—had done much to divide the never-too-friendly wings of the commonwealth, and the efforts of the local agitators had well-nigh effected a complete separation. Such events as the Tennessee massacre, Elder Nicholson's lecture thereon, with the strictures of the Mormon press upon the Anti-Mormons and their operations, were not calculated to mend the breach or bridge the widening chasm.

The Mormons, whatever might be said of past aggressions on their part, were now acting, as they had been for many years, purely in self-defense. They would have been glad of peace on any honorable terms, and only rejected the conditions upon which it was offered because they deemed them dishonorable. The abandonment of plural marriage and the dissolution of their political organization were the concessions proposed. They felt that they could not make them. To do so was equivalent in their minds to a compact with Satan, a covenant with Hades. It meant to them, however lightly regarded by their opponents, the surrender of their religious and political rights. Into such an agreement they could not and would not enter. Better far, thought they, to let the war go on, whatever the end might be, than to purchase peace and tranquility on such terms—the relinquishment of a tenet of their religion and their sacred rights as freemen.

So the war went on; the Anti-Mormons, with all whom they could succeed in whipping into line, or enlisting from any motive as their allies and supporters, renewing more fiercely than ever the assault, and the Mormons battling as best they could, in the

courts, at the polls, and wherever assailed, in defense of what rights remained to them.

With the prevailing sentiment against polygamy, the laws in force for its suppression, the belief that the Mormon leaders manipulated local politics in their own interest, and the general unpopularity of Mormonism, it was not difficult for the agitators, who assumed to possess all the loyalty that could be found in Utah, and to control the executive and judicial machinery of the Territory, to effect a combination, with themselves as its nucleus and mainspring, potent and dangerous in the extreme. Where fact would not suffice to win converts and allies to their cause, they did not hesitate to use fiction; and where pleading and argument would not avail, they were ever ready to resort to intimidation. The "Bishop West" canard is but one of many manufactured sensations used by them to further their ends.

Thus it was that in 1884-5 there was inaugurated a general movement, comprising as its factors, supporters and sympathizers, governor, judges, attorneys, marshals, editors, politicians, preachers, merchants, miners, allied with saloon-keepers, gamblers, and bad characters in general, whose object was to prosecute to the bitter end a "holy war" against Mormonism. To some, the most reputable class—who of course did not actually affiliate, except in politics, with the disreputable characters who from various motives ranged themselves under the same banner,—this merely meant polygamy and the union of Church and State. These surrendered, and the war was over, so far as this class was concerned. They were not persecutors for persecution's sake, as the oppressed people were often tempted to believe. Like the Mormons themselves, they contended for what they considered pure and lofty principles. They were men of patriotic if not philanthropic motives, sincere in all that they did, whatever animus they may have exhibited at times, however mistaken their premises and conclusions in regard to Mormonism, and however questionable some of the means and methods by which they effected their designs.





John Fred Sen.



With others, the end sought, and the only issue, apparently, that would satisfy them, was the utter extirpation of Mormonism. On no other terms would they treat. They were disciples of the gospel of hate. They hated Mormonism and everybody connected with it, and their hatred seemed implacable. Sincere were they likewise, but not always honorable; not always scrupulous as to the tactics and weapons that they employed.

Another class not to be omitted from the category were those who made money out of the local agitation, and therefore helped to promote it; yet for obvious reasons did not wish Mormonism destroyed, and the agitation over it to cease. Such would have grieved rather than rejoiced had the system, by any act, either of its adherents or its adversaries, come to an end.

Nor should we forget to mention still another element among the Gentiles, who, though lending financial aid to the movement in question, were never in hearty sympathy with the extreme course pursued by its authors and promoters. We refer to the majority of the non-Mormon merchants and business men of Utah. These also made money out of the Mormons, but made it in a legitimate way; and had much to lose and nothing to gain from the agitation fomented by religious fanatics and the radical members of their political party. They were not in sympathy with Mormonism, but peace and good will meant for them Mormon patronage; while discord and turmoil signified the opposite. We shall see how this conservative element, though bending its neck to the anti-Mormon yoke in the beginning, eventually rose in rebellion against the tyranny of its associates, and put a stop to their reckless and unreasonable career.

Out of this heterogeneous combination of naturally discordant elements, and a posture of affairs so anomalous that centuries might not suffice to produce its counterpart, grew that reign of trouble and terror called "The Crusade;" the principal events of which are about to be narrated.

The first mutterings of the coming storm had been heard for some time prior to the advent of Chief Justice Zane. Though sub-

sequently regarded as the head and front of the movement—a natural circumstance in view of his position and some of his acts and utterances—he cannot be considered its originator. That a tempest of tribulation was about to burst upon the Latter-day Saints had been foreseen for many months. In fact it had been predicted by their venerable President as early as April, 1882, a few weeks after the passage of the Edmunds Law.

It was on Friday, April 7th, during the annual conference of the Church, that the Mormon leader first alluded to the coming “storm.” Said he, half humorously, though with serious intent: “Let us treat it as we did the snow-storm through which we came this morning—put up our coat collars [suiting the action to the word] and wait till the storm subsides. After the storm comes sunshine. While it lasts it is useless to reason with the world; when it subsides we can talk to them.” In the afternoon of the same day President Taylor again referred to the subject, and uttered these words, which, in view of the financial panic that followed, the effects of which are still felt throughout the land, are remarkable: “There will be a storm in the United States after a while; and I want our brethren to prepare themselves for it. At the last conference I think I advised all who were in debt to take advantage of the prosperous times and pay their debts; so that they might not be in bondage to anyone; and when the storm came they might be prepared to meet it. There will be one of that kind very soon; and I thought I would give you this warning again, and repeat this piece of advice. The wise will understand.”\*

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\* The afternoon of April 9th—the closing day of the conference—was occupied by President Taylor in a discourse of over two hours’ duration, in which he prophesied of impending calamities. He concluded with the “Hosanna Shout,” in which he led the congregation, the reverberating thunders of whose united voices, ten or eleven thousand strong, caused the great Tabernacle to tremble. The shout, thrice repeated, was as follows: “HOSANNA! HOSANNA! HOSANNA! TO GOD AND THE LAMB, FOREVER AND EVER, WORLDS WITHOUT END. AMEN, AMEN, AND AMEN.”

Said Mr. Phil Robinson, who was present as representative of the *New York World*: “Acquainted as I am with displays of oriental fanaticism and western revivalism, I set

President Taylor, at this conference, thus outlined the position of the Mormon people in relation to the Edmunds Law :

We do not wish to place ourselves in a state of antagonism, nor act defiantly towards this Government. We will fulfill the letter, so far as practicable, of that unjust, inhuman, oppressive and unconstitutional law, so far as we can, without violating principle ; but we cannot sacrifice every principle of human right at the behest of corrupt, unreasoning and unprincipled men. \* \* \* We shall abide all constitutional law, as we always have done ; but while we are God-fearing and law-abiding, and respect all honorable men and officers, we are no craven serfs, and have not learned to lick the feet of oppressors, nor to bow in base submission to unreasoning clamor. We will contend inch by inch, legally and constitutionally, for our rights as American citizens.

A few months later occurred a sensational episode which, though isolated from the long series of raids and prosecutions that followed, was a precursor of what was approaching and gave token of some of the tactics that would be employed by the crusaders. It was the imprisonment of a young Mormon woman named Annie Gallifant. She was the alleged plural wife of John Connelly, a baker and confectioner. On the 17th of November, 1882, the young woman—she was under twenty years of age—was before the Grand Jury at Salt Lake City, where she was plied with questions the answers to which, it was supposed, would lead to the conviction of her reputed husband. One of the questions was a direct demand for the name of the person to whom she was married. She refused to answer, whereupon she was taken before Chief Justice Hunter, who informed her that the

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this Mormon enthusiasm on one side as being altogether of a different character, for it not only astonishes by its fervor but commands respect by its sincere sobriety. The congregation \* \* \* reminded me of the Puritan gatherings of the past as I had imagined them, and of my personal experiences of the Transvaal Boers as I knew them. There was no rant, no affectation, no striving after theatrical effect. The very simplicity of this great gathering of country-folk was striking in the extreme, and significant from first to last of a power that should hardly be trifled with by sentimental legislation. \* \* \* Nor could anything exceed the impressiveness of the response which the people gave instantaneously to the appeal of their President for the support of their voices. The great Tabernacle was filled with waves of sound as the 'Amens' of the congregation burst out. The shout of men going into battle was not more stirring than the closing words of this memorable conference, spoken as if by one vast voice."

questions asked were proper, and that it was her duty to reply to them. Still she refused. The Judge then sentenced her to imprisonment in the Penitentiary until such time as she should be willing to answer.

The event created considerable indignation, which was not in any degree lessened when it became known that the young woman thus consigned to a felon's cell was about to become a mother. She was a frail little creature, and it was feared that a premature birth might result from the excitement attendant upon her incarceration, to be followed by the death of both mother and child. To calm the solicitude of her friends, it was announced that the Government physician at the Penitentiary had been instructed to look after the lady's interests in case an emergency should arise. This, so far from allaying anxiety in her behalf, only served to increase it, since it was known that the physician in question, on complaint of a brother practitioner—like himself a non-Mormon—had recently been expelled from the Medical Association for malpractice. All fears, however, were set at rest regarding the imprisoned witness on the day following her incarceration. The Grand Jury having been discharged, she was released from custody and permitted to return to her home. Her child was born four days later. Subsequently, John Connelly, who proved to be her husband, was indicted for polygamy and in the fall of 1884 was tried and acquitted. There was no doubt that he was a polygamist—Annie Gallifant admitting on the witness stand that she was his plural wife—but it appeared that they were married more than three years before the finding of the indictment, and the statute of limitation interposed to prevent a conviction.\*

In the spring of 1883, six months after the imprisonment of Annie Gallifant Connelly, a case very similar to hers arose in the Second Judicial District. It was the celebrated Belle Harris episode. It was on the 10th of May that this lady, a resident of Monroe, Sevier

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\* Subsequently John Connelly was convicted of unlawful cohabitation and sent to the Penitentiary.

County, was summoned before the Grand Jury at Beaver to answer certain questions as to her domestic relations. She was asked if she was a married woman—she had at the time a nursing infant in her arms—and if so to whom was she married, and when. The object in view, of course, was to elicit information that would lead to the indictment of her husband. She declined to answer on the ground of personal privilege, the question propounded being in relation to herself. The matter was reported to the Court by the assistant Prosecuting Attorney—Zera Snow—and Judge Twiss decided that the question was a proper one. Still the witness refused to answer, whereupon she was fined twenty-five dollars and remanded to the custody of the United States Marshal. Proceedings in *habeas corpus* were instituted by her attorney, Mr. S. A. Kenner, and to save other points in the case, an appeal was taken to the Supreme Court of the Territory. This tribunal, owing to the absence of one or more of the members, did not sit for several weeks; but, when the Judges—Hunter, Twiss and Emerson—came together, they held with the District Court, that the witness was in contempt. The date of this decision was the 25th of June.

Meantime Belle Harris, with her infant child—a boy less than twelve months old—remained in the Penitentiary. She was kindly treated by Marshal Ireland and his subordinates, being given an apartment adjoining the Warden's quarters and made as comfortable as possible under the circumstances. Physically she suffered only from the heat and the poor ventilation of her narrow prison-house. She was kept in durance until the 31st of August, when, by order of Judge Twiss, based upon a statement from the Grand Jury, who were about to be discharged, that they had been misled in the matter, and now desired to withdraw the question propounded to the witness, she was released from custody. On her emergence from prison she was greeted by the Mormon public as a heroine, who had nobly suffered for a principle. A reception was given in her honor at the home of A. M. Musser, Esq., of Salt Lake City.

It may interest the reader to know that Miss Belle Harris, now

Mrs. Belle Nelson, of Provo, is a niece of Martin Harris, one of the Three Witnesses to the Book of Mormon.\*

Another year passed and then came the arrest and initial proceedings in the case of Rudger Clawson; the virtual opening, on the part of the courts, of the great anti-polygamy crusade. The defendant in this celebrated case was a son of Bishop H. B. Clawson and his second wife, Margaret Judd. He was a young man of exemplary habits, zealous for the cause in which he had been nurtured from childhood. His intrepid conduct at the time of the murder of his fellow missionary, Joseph Standing, in Georgia, has been dwelt upon. He was a firm believer in the principle of plural marriage, to which he owed his earthly origin, and had married, according to rumor, two wives. His first wife was Florence Dinwoodey, daughter of Henry Dinwoodey, the wealthy head of a large furniture establishment at Salt Lake City. His alleged plural wife was Lydia Spencer, daughter of Daniel Spencer; a name prominent in early Utah annals.

Rudger Clawson was arrested by United States Marshal Ireland on the 24th of April, 1884; the same day on which he had been indicted by the Grand Jury. Taken before U. S. Commissioner William McKay, he was placed under bonds in the sum of three thousand dollars and was then given his liberty.

That Lydia Spencer was married to the defendant, proved to be true. Indeed, he had taken little or no pains to conceal the fact. With his usual disregard of danger, he had allowed himself to be

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\* An incident which caused the imprisonment of Belle Harris to stand out in bolder relief than would otherwise have been the case, was the leniency shown by the Federal law officers towards one Dr. J. B. Carrington, a Gentile and an alleged bigamist. Carrington admitted having married two women, but claimed that he thought he had been divorced from his first wife before marrying the second, and that the Judge and Clerk of the Probate Court of Davis County, in which the divorce proceedings were pending, had led him to so believe. The Judge—W. R. Smith—and Clerk—Joseph Barton—denied making any statement to that effect. U. S. Commissioner Gilchrist, who heard the case against Carrington, set the defendant at liberty. The Mormons pointed to this incident and the issue in the Belle Harris case as showing the difference between “tweedle-dee and tweedle-dum.”



seen with her quite often, not only at her home, but upon the streets and in other public places. He did not propose to plead guilty, however, and thus lose the opportunity of defending in court not only his own case, but the general cause of which circumstances had made him the champion. Hence the legal proceedings that followed.

The first move made for Elder Clawson after his arrest and liberation on bail, was when his attorney, F. S. Richards, accompanied by his client, appeared in the District Court and presented a motion to quash the indictment. This was on the 30th of April. The ground for the motion was the illegality of the Grand Jury. In the empaneling of that body, on the 14th and 15th of the month, all Mormons had been excluded, the U. S. Attorney, Mr. Dickson, challenging, and Judge Hunter sustaining his challenges, all jurors who admitted their belief in the religious tenets of the Mormon Church. By this means fifteen names had been rejected, and only ten of those originally drawn from the jury box accepted. In order to complete the panel of fifteen—the number required by law—five other names had been drawn from the jury list without previous notice. For these reasons, it was contended, the Grand Jury was illegal, and the indictment found by it should therefore be set aside.\* The motion was received and filed, but arguments thereon were postponed.

It was understood that the ground taken by U. S. Attorney Dickson and Judge Hunter, in excluding all Mormons from the Grand Jury, was that furnished by the fifth section of the Edmunds Act, which provided “that in any prosecution for bigamy, polygamy or unlawful cohabitation, under any statute of the United States, it shall be sufficient cause of challenge to any person drawn or summoned as a jurymen or talesman, first, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, or second, that he believes it right for a man

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\*The names of the Grand Jury were: John Tiernan, James W. Campbell, G. W. Edgington, James F. Lees, J. A. Trimble, A. T. Manning, Lucien Simons, W. H. Sells, Robert W. Davis, Matthew Cullen, J. H. Winslow, John F. Hardin, Joseph Marion, Richard Grant and James M. Darling.

to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman."

The opposite view was that this provision did not apply to grand jurors, but to petit jurors only, since the prosecution of a case did not begin until after the finding of the indictment; and that the rejection of the Mormon grand jurors was therefore unauthorized. Another point was, that while the Mormon jurors were challenged and rejected for admitting their belief in the doctrines of Mormonism—though stating that they would not allow that belief to sway them from the performance of their duties as grand jurors, but would find indictments according to the law and the evidence—the Gentile jurors were not questioned regarding their belief in or practice of unlawful cohabitation.

The conclusion reached by the public was that an anti-polygamy—not an anti-immorality—crusade had been determined on; that the movement was about to be launched, the combat about to begin; and that the United States Attorney, as captain of the craft, with his crew of aids and advisers, were engaged in "clearing the decks for action."

The Clawson case did not come up again until autumn. Meantime occurred an episode similar in most respects to that in which Belle Harris, the Sevier County heroine, was the central figure. It was the incarceration in the Penitentiary of another young Mormon woman—Nellie White—summoned as a witness before the same Grand Jury that had indicted Rudger Clawson.

Miss White, who was a native of Salt Lake City, but had spent the greater part of her life in Morgan County, had been teaching music for several years in Summit County, where she had also conducted a day school. The school was at Wanship, and while there she boarded in the family of Bishop Jared Roundy, whose daughters were among her pupils. She was suspected of being the Bishop's plural wife, and as it was his case that the Grand Jury were considering, she was subpœnaed for the purpose of being interrogated.

Answers were demanded to a series of nine questions, all designed to draw forth information as to whether or not she was married to Bishop Roundy. Refusing to answer any of them, she was taken before the Court, where she reiterated her refusal. Judge Hunter informed her that the questions were proper to be asked and answered, but she still maintained silence. Thereupon she was ordered into the custody of the United States Marshal, to remain until she should answer the questions, or until a further order of the Court in her case. These proceedings took place on the 22nd of May. Miss White was accordingly placed in the Penitentiary, in the room occupied by Belle Harris the year before, and was treated with the same kindness as that meted out to her predecessor.

The Anti-Mormons took umbrage at this leniency, and tried to induce Marshal Ireland to subject the lady to a more rigorous regime, for the purpose of extorting the desired information. The Marshal declined to listen to these unchivalrous, not to say cruel suggestions, deeming, no doubt, the situation of the inmates of the Penitentiary—which was miserably furnished at the time—sufficiently uncomfortable, particularly in hot weather, without adding extra tortures to the unavoidable hardships suffered by the prisoners.

For a little over six weeks Miss White remained a captive, during which time no further effort was made to induce her to answer the questions put to her by the Grand Jury. It was just as well, for she was determined not to answer them. "I consider them improper questions," said she, "and I do not know of any punishment which would compel me to answer them."

During her incarceration she received numerous visits, among her callers being Miss Kate Field, the well known lecturer and journalist, who was then in Utah collecting materials for her bitter anti-Mormon effusions of some time later. Miss White's friends were limited to half-hour calls and were only permitted to speak to her in the presence of the guard; these being among the rules of the prison. Miss Field was allowed to stay as long as she desired, and was even left alone with the prisoner, the guard retiring for that purpose. The

captive was closely questioned by her shrewd interviewer but nothing was elicited that the public did not already know. Miss White was set at liberty on the 7th of July.

But it was not only plural wives or women, supposed to be plural wives, who were summoned before grand juries in those days. The first or legal wives of men suspected of polygamy were brought before such inquisitorial bodies, placed under oaths of secrecy, and required to testify concerning the marital relations of their husbands. These proceedings, which were utterly without warrant in law, showed to what lengths the crusaders were prepared to go.\*

September came and with it the installation of Chief Justice Zane as presiding magistrate in the District Court at Salt Lake City. The crusaders may have waited for him to don the ermine before pressing to any great extent the anti-polygamy movement. It was known that Judge Hunter was not altogether in harmony with the radicals, who

\*The local statute upon this subject stood as follows :

SECTION 421. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties.

Greenleaf, in his work on evidence, Vol. I., Sec. 324, says: "The rule by which parties are excluded from being witnesses for themselves applies to the case of husband and wife, neither of them being admissible as a witness in a cause, civil or criminal, in which the other is a party." In Sec. 254 the same writer says: "Communications between husband and wife belong also to the class of privileged communications, and are therefore protected independently of the ground of interest and identity which precludes the parties from testifying for or against the other. The happiness of the married state requires that there should be the most unlimited confidence between husband and wife, and this confidence the law secures by providing that it shall be kept forever inviolable; that nothing shall be extracted from the bosom of the wife which was confided there by the husband."

In 2 Kent's Commentaries, Sec. 179, we read: "The husband and wife cannot be witness for or against each other in a civil suit. This is a settled principle of law and equity, and is founded as well on the interest of the parties being the same, as on public policy. The foundations of society would be shaken \* \* \* by permitting it. Nor can either of them be permitted to give any testimony, either in a civil or criminal case, which goes to criminate the other."

It was the disregard of the local statute, based upon the principles thus enumerated, that had caused the reversal, by the Supreme Court of the United States, of the decision of the District Court in the Miles case.

had endeavored for that reason to procure his removal from office. His successor, though a superior man to him in almost every respect, was not as well acquainted with the local situation, was probably more prejudiced against the Mormons, and not as well aware of the motives and methods of their opponents. He was therefore better adapted for the work in hand. Hence—as may fairly be presumed—the interregnum of delay, the suspension of operations from April to September, in which latter month Judge Zane assumed the position vacated by Judge Hunter.

The fact that the United States Attorney, Mr. Dickson, and his assistant, Mr. Varian, were also new men, full of zeal and energy, anxious to distinguish themselves in an assault upon the system which had proved the rock upon which so many Federal officials had gone to pieces, was also favorable to the anti-Mormon cause.\*

The first question confronting Judge Zane after taking the bench in the Third District Court, was one almost if not quite without precedent in the annals of the Territory. It arose out of the proposed formation of the Grand Jury for the September term.

It was late in the month—September 27th—and the Grand Jury was being empaneled. Several days had been consumed in the process, and the panel was still incomplete. This was owing to the rigid examination to which Mormon jurors were subjected. Among the questions propounded to them by the U. S. Attorney was this: “Do you believe that it is right for a man to have more than one living and undivorced wife at one time, or to live in the practice of cohabitation with more than one woman at the same time in the marriage relation?” If they

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\*Judges Twiss and Emerson soon went out of office, the former being succeeded by Judge Boreman, who had been his predecessor, and had been reappointed January 31st, 1885. He entered heart and soul into the crusade. Judge Emerson never gave it countenance. He was averse to making a specialty of any class of cases, and in the author's presence, after the crusade had begun, expressed his disapproval of it. He said he would treat polygamy as any other crime, but would not resort to any extraordinary measures for its extirpation. A staunch Republican, Judge Emerson, after Cleveland's inauguration in March, 1885, sent in his resignation. He was succeeded by Judge Orlando W. Powers.

did not answer satisfactorily they were rejected. One Mormon succeeded in getting upon the Grand Jury, but was accepted only upon his stout insistence that he did not believe in polygamy. All others of his faith were challenged by the U. S. Attorney, and the challenges were sustained by the Court. Judge Zane held with Judge Hunter, that section five of the Edmunds Law, relating to the challenging of jurors in polygamy prosecutions, referred not only to petit jurors but to grand jurors as well.

Twelve jurors had been accepted—one of whom, Thomas Cupit, was subsequently excused for the reason that he was a U. S. Commissioner—when it was discovered that the jury box, containing the names of persons qualified to serve as grand jurors, was exhausted. Thereupon Mr. Varian moved that an open venire issue to the U. S. Marshal, requiring him to summon from the body of the district a sufficient number of persons to complete the panel.

The motion created a sensation, recalling as it did the unlawful practices of Judge McKean's court, twelve years previously. It was the use, or misuse, of the open venire that called forth from the Supreme Court of the United States the celebrated Engelbrecht decision, annulling the labors of McKean's illegally constructed grand juries.

The attorneys being divided in their opinions as to whether or not an open venire could lawfully issue, under the circumstances, Judge Zane, on motion of Mr. Varian, invited a discussion of the question by the representatives of the legal profession present.

In order to make plain the situation to the general reader, a brief review may here be necessary. In the early days of the Territory it had been the custom to select and summon grand and petit jurors precisely in the manner that Mr. Varian now proposed. As early as 1853 the Legislature had provided that:

In jury cases, before the introduction of any evidence, the court shall issue an order requiring an officer to summon for that purpose a reasonable number of judicious men, etc., and that when necessary the court shall issue an order requiring an officer to summon fifteen judicious men, residents of the county, for a grand jury, etc.

This practice prevailed until January, 1859, when the Legislature enacted a law—which was amended in February, 1870—requiring that jurors be selected and summoned in the following manner: The county court in each county, composed of the probate judge and three selectmen, were to make out from the assessment rolls a list of fifty men qualified to serve as jurors, and at least thirty days before the session of the district court, the territorial marshal, or his deputy, with a writ issued by the clerk of that court, should proceed to the office of the clerk of the county court of the county from which jurors were to be summoned and there witness the promiscuous drawing from a box or other safe place of deposit in which tickets containing the fifty names had previously been placed, the number of jurors required. The box was to be thoroughly shaken before the drawing took place. Eighteen names were to be drawn for grand jurors and twenty-four for petit jurors. Separate lists containing these names, signed by the clerk and officer having the writ, were to be filed with the clerk, and from these lists, respectively, the grand and petit juries would be empaneled. Provision was made for a new drawing and summons if necessary to complete a panel.

This law was in force in 1870 when Associate Justice Strickland, presiding temporarily in the Third District Court, caused an open venire to issue to the United States Marshal, requiring him to summon from the streets, or wherever he might choose to select them, persons to serve as grand jurors for the September term. It was this illegal act—sanctioned by Judge McKean, who soon succeeded Judge Strickland in the district—with other acts of like character, that paved the way for the Engelbrecht decision.

In June, 1874, the Poland Law was enacted by Congress, and from that time until September, 1884, when Judge Zane took his seat upon the Utah bench, the jury system of the Territory had been governed by that statute. Its provisions in relation to juries were as follows:

That within sixty days after the passage of this act, and in the month of January annually thereafter, the clerk of the district court in each judicial district, and the judge

of probate of the county in which the district court is next to be held, shall prepare a jury-list from which grand and petit jurors shall be drawn, to serve in the district courts of such district, until a new list shall be made as herein provided. Said clerk and probate judge shall alternately select the name of a male citizen of the United States who has resided in the district for the period of six months next preceding, and who can read and write in the English language: and as selected, the name and residence of each shall be entered upon the list, until the same shall contain two hundred names, when the same shall be duly certified by such clerk and probate judge; and the same shall be filed in the office of the clerk of such district court, and a duplicate copy shall be made and certified by such officers, and filed in the office of said probate judge.

Whenever a grand or petit jury is to be drawn to serve at any term of a district court, the judge of such district shall give public notice of the time and place of the drawing of such jury, which shall be at least twelve days before the commencement of such term; and on the day and at the place thus fixed, the judge of such district shall hold an open session of his court, and shall preside at the drawing of such jury; and the clerk of such court shall write the name of each person on the jury lists returned and filed in his office upon a separate slip of paper, as nearly as practicable of the same size and form, and all such slips shall by the clerk in open court be placed in a covered box and thoroughly mixed and mingled; and thereupon the United States marshal, or his deputy, shall proceed to fairly draw by lot from said box such number of names as may have previously been directed by said judge: and if both a grand and petit jury are to be drawn, the grand jury shall be drawn first: and when the drawing shall have been concluded, the clerk of the district court shall issue a venire to the marshal or his deputy, directing him to summon the persons so drawn, and the same shall be duly served on each of the persons so drawn, at least seven days before the commencement of the term at which they are to serve: and the jurors so drawn and summoned shall constitute the regular grand and petit juries for the term for all cases.

And the names thus drawn from the box by the clerk shall not be returned to or again placed in said box until a new jury list shall be made.

If during any term of the district court any additional grand or petit jurors shall be necessary, the same shall be drawn from said box by the United States marshal in open court; but if the attendance of those drawn cannot be obtained in a reasonable time, other names may be drawn in the same manner.

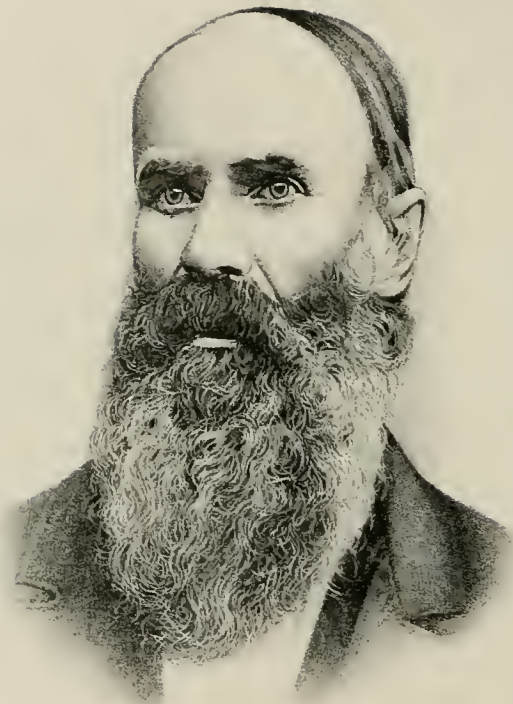
Each party, whether in civil or criminal cases, shall be allowed three peremptory challenges except in capital cases where the prosecution and the defense shall each be allowed fifteen challenges.

In criminal cases, the court, and not the jury, shall pronounce punishment under the limitation prescribed by law.

The grand jury must inquire into the case of every person imprisoned within the district on a criminal charge and not indicted; into the condition and management of the public prisons within the district; and into the wilful corrupt misconduct in office of public officers of every description within the district; and they are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the district.







*Daniel Stuart*



Agnes Stewart



Thus the Gentiles of Utah—a small minority in the Territory—whose interests in the drawing of jurors were guarded by the clerks of the district courts, were given equal representation on the jury lists with the Mormons, the overwhelming majority, who at that time elected the probate judges of the several counties. This arrangement, though not considered equitable by the Mormons, was generally satisfactory to them, and sufficed the conservative Gentiles.

For ten years the practice of drawing jurors in the manner prescribed by the Poland Law had prevailed. Not until Judge Hunter, in April, 1884, caused the panel of the Grand Jury to be filled in a somewhat irregular manner, does there seem to have been any deviation from the rule. Judge Hunter did not authorize the issuance of an open venire, but merely directed the drawing of additional names from the jury box, and the summoning of their owners to serve without the notice required by law.

But now referring to the situation at the beginning of Judge Zane's administration—the jury box was exhausted. The regular list of two hundred names, prepared in January, had proved inadequate, and the Court was facing the dilemma, whether it should adjourn until after January, 1885, when a fresh list of names would be provided, or resort to the open venire process, the ordinary method of obtaining jurors in the circuit and district courts of the United States. Judge Zane resolved upon the latter course. Before executing his resolve, however, he lent a willing ear to the discussion of the subject by the attorneys of his court.

The first speaker was Mr. Varian, the assistant U. S. Attorney, who expressed his doubts as to the power of the Court to grant the motion for the issuance of the writ.

Judge J. G. Sutherland was of the opinion that under existing circumstances the Court had a legal right to issue an open venire. The Poland Law having been spent in the exhausting of the jury box, and the Legislature not having provided any measure to meet the present exigency, the common law procedure ought to find application.

Mr. C. K. Gilchrist was of quite a different opinion. To him the question was not debatable. Congress, in order to act fairly—in response to the plea put forth that a portion of the inhabitants of the Territory [the Mormons] felt that the Federal judiciary were hostile to them—had provided a means in the Poland Law whereby both sides could be equitably represented. If this jury was not formed in the manner provided by that law it would be a nullity.

Judge Thomas Marshall held a similar opinion. The provisions of the Poland Law relating to the formation of juries were exclusive. It would be dangerous to thwart the will of Congress by disregarding those provisions.

Mr. R. K. Harkness also held that the Court had not the power to grant the writ. The common law provision might apply in the absence of a statute, but the presence of a statute, as in this case, put a different phase upon the matter. The Poland Law bound the Court's action. Even if that law were not exclusive, the common law did not direct the Court as to the method of selecting juries. All Territorial legislation inconsistent with the Poland Act had been repealed by it, and there never was any common law in Utah to apply in the selecting of jurors. The Court had no inherent right to select juries in the absence of a law prescribing the method, and the Poland Law, prescribing the method, was the only law in force regulating such matters.

Judge J. R. McBride argued that if the Court had the power to act, it had the power to supply the means of acting. This power grew out of the inherent right of the Court to administer the law. It was not claimed that the statute should be disregarded. The question under discussion only arose after the statute had been spent. When the statute had been exhausted, all the powers to enable the Court to proceed were implied. The Organic Act of the Territory carried with it the common law and it was applicable in the present emergency. If Congress had intimated that the Poland Law was to be exclusive, that would settle the matter, but as it had

not, it must be conceded that the statute was only intended to modify and not to do away with the common law.

The last speaker was Mr. J. L. Rawlins, who cited a case where an open venire had been issued to fill up two vacancies in a grand jury, caused by two jurors suddenly leaving the State. The indictment found by this grand jury had been quashed because of this irregularity. The defect in the argument that the Court could supplement the law under which it was authorized to select jurors, was shown in the fact that the Poland Law was designed to be exclusive, in order, as had been stated, to give each side "a fair show," to deal out even-handed justice alike to Mormon and Gentile.

At this point Judge Zane adjourned the court until two o'clock in the afternoon. At that hour he delivered an oral opinion, allowing the motion of the public prosecutor and ordering the open venire to issue for eight jurors, "good and lawful men," to be selected from the body of the district by the United States Marshal.

Judge Zane's reasoning was substantially as follows: Congress had provided that four terms of court should be held yearly in each judicial district of the Territory. These terms had been fixed for February, April, September and December. The district court was a court to try criminal as well as civil cases, but without grand and petit juries it could not try criminal cases. Having been commanded to hold its four terms annually, and the statute providing for the selection of jurors being exhausted, the Court must use the necessary means to bring its powers into exercise. To say that Congress intended that in this contingency the Court was to have no power to summon a jury, was to say that Congress intended to deprive accused persons of the right of speedy trial—a right guaranteed by the Constitution. Unless the Court could provide juries, ten months must elapse and two terms of court—the September and December terms—be omitted, before the Court could sit again and transact criminal business. The present situation differed from that which existed at the time the Engelbrecht case had its origin. The Legislature had then provided a method by which the jury was to be

summoned, and the Court refused to pursue that method, but issued an open venire. In the present case the means provided by Congress had been exhausted and the question was whether the Court, by implication, had the power to summon a jury. Under the circumstances the Judge was disposed to hold that it was the legal duty of the Court to exercise the common law power, the power incident to all courts of this character, unless deprived of the same by competent authority. Congress not having expressly deprived the Court of that power, the Judge did not think it should be held to have done it by implication. He therefore granted the motion, and ordered the open venire to issue.

Armed with the writ, Marshal Ireland sallied forth to find and bring into court the eight jurors for whom it had been issued. He returned about four o'clock with the following named persons: C. H. M. Y. Agramonte, W. F. James, Bowman Cannon, Alexander Rogers, W. F. Barbee, N. D. Hodge, M. Livingston and J. J. Snell. Of these Messrs. Agramonte, Cannon, Snell and Livingston were accepted. The panel of the grand jury was now complete.

Before the members were sworn, Mr. F. S. Richards, counsel for one William Hilton, who had been held to answer to the grand jury, challenged the array, on the ground of the irregularities noted. Mr. Richards asked for a postponement until Monday, September 29th, that he might prepare an argument. The Court refused to grant the request, denied the challenge, appointed Mr. Agramonte foreman of the grand jury, and ordered that it be sworn. This was done. The Judge then charged the jury, and accompanied by Bailiff James D. McCurdy they retired to begin their labors.

As a matter of course, Judge Zane's action in the open venire proceedings was much criticised. Most of the Mormons and some Gentiles condemned it. The *Deseret News* predicted that his blunders would result in his discomfiture, and styled him "another judge with a mission."

On the other hand, the Anti-Mormons were jubilant, and sang praises to the new Chief Justice. Their organ, the *Tribune*, so worded



its defense of the Judge, against the strictures of the *News* upon his official course, as to make it appear that the Mormon journal had loaded him with opprobrious epithets. Speaking of the compliments paid to Judge Zane by his Illinois friends prior to his departure for Utah, the *Tribune* said:

How he must despise them, that through all the years there they never found out that he was an idiot and a scoundrel, and that he was as tyrannical as he was stupid and corrupt. He might as well learn first as last that he is in a place where if he will serve the majority, he will receive only cringing and obsequious adulations; if he dares to oppose them, he will never again have credit for either a sensible or honest thought.

Thereupon the *News* charged home upon the *Tribune* thus:

The organ of slander in this city sets itself up as the organ of the Federal officials, and this morning very meekly feigns to espouse the cause of Judge Zane against the criticisms of the *News* and *Herald*. But, as usual, it drifts into vulgarity and wallows in personalities. The question discussed by the *News* was the unlawful filling up of a grand jury. The open venire was the subject ventilated. Judge Zane's personal character was not touched upon in this paper. But the *Tribune*, avoiding the question of the lawfulness of the present grand jury, flings all kinds of epithets at the Judge, pretending that we are authority for its blackguardism. \* \* \* Who has called the Judge "an idiot and a scoundrel?" or intimated that he was "stupid and corrupt?" No one but the *Tribune* vituperators. It is the common talk of these "high-toned American gentlemen." \* \* \* The latter part of the paragraph we have quoted will read exactly right if the word "minority" is substituted for "majority." Only a difference of four letters, but it sets forth the situation as it is. Every judge that has sat on the bench while that unprincipled sheet has had existence has been denounced and derided and lashed with the vilest epithets, if he has dared to decide on any question in a manner opposed to its anti-Mormon designs. And when decisions have been rendered which were oppressive in their effects upon anything Mormon, but which were afterwards set aside by a higher court, their praises have been so very sweet as to be sickly and nauseous to a man of sense. \* \* \* And Judge Zane may expect from that sheet just exactly that which it falsely states will be the course of the majority here. \* \* \* The sweet epithets they use this morning are a small sample of their stock in trade.

The grand jury for the September term was now in session. With one exception, and he a disbeliever in polygamy, all its members were non-Mormons, and its foreman, Col. Agramonte, an Anti-Mormon of the most radical stripe. He was one of the eight jurors summoned on open venire. He had once professed conversion to Mormonism, and

had married the widow of a polygamist. Forsaking the Mormon cause, he was now one of its bitterest foes.

The presence of such characters in the community constituted one of the main arguments against the employment of the open venire method of selecting jurors: and was one of the chief sources of danger to those liable to prosecution. Men who hated the Mormons—and who can hate like an apostate?—were hardly fit persons to sit in judgment upon them.

Hence the opposition to the open venire process, whereby the U. S. Marshal, who might himself be an Anti-Mormon, could, if so inclined, select as jurors men who from prejudice and private pique would know no law and be governed by no evidence as against their hatred of the hapless victims of their malice. It was the dread of packed juries—packed to convict—that caused the Mormons to protest against the proceedings in question, and insist upon the observance by the district courts of the provisions of the Poland Law, which they felt was about the only bulwark of liberty now left to them.

## CHAPTER XI.

1884-1885.

THE CRUSADE BEGINS—JUDGE ZANE'S FIRST POLYGAMY CASE—THE UNITED STATES VS. RUDGER CLAWSON—FIRST AND SECOND TRIALS OF THE DEFENDANT—PRESIDENTS TAYLOR AND CANNON UPON THE WITNESS STAND—ARREST AND IMPRISONMENT OF LYDIA SPENCER, THE DEFENDANT'S PLURAL WIFE—ELDER CLAWSON CONVICTED—A BOLD SPEECH AND A SEVERE SENTENCE—THE CONNELLY AND EVANS CASES.

THE case of the United States against Rudger Clawson now came to trial. It was Judge Zane's first polygamy case, and the first one instituted under the Edmunds Law that passed beyond preliminary stages and was submitted to a petit jury. The initial proceedings were begun, or more properly speaking, resumed, on Thursday, October 2, 1884, when the defendant's attorney, F. S. Richards, renewed in the District Court the motion, made by him at the April term of that tribunal, to quash the indictment, on the ground of the illegality of the grand jury which had found it. This motion led to an interesting discussion, and to another important ruling by Judge Zane upon the jury question.

The circumstances under which the motion was originally made were detailed in the last chapter. In the empaneling of the grand jury for the April term, out of thirty names drawn from the jury box five were excused as not having the qualifications required by the Poland Law. Of the remaining twenty-five, fifteen were names of Mormons and ten of non-Mormons. The former were all challenged and excused upon answering in the affirmative the following questions:

Do you believe the doctrines and tenets of the Mormon Church?

Do you believe in the doctrine of plural marriage, as taught by the Mormon Church?

Do you believe it is right for a man to have more than one undivorced wife living at the same time?

The non-Mormons were not required to answer these or any other questions relating to polygamy or unlawful cohabitation, but were accepted; and to complete the panel five other non-Mormon names were drawn from the jury box, without previous notice. It was the grand jury thus constituted that indicted Rudger Clawson, whose attorney now renewed his motion for the quashing of the indictment.

The position taken by the United States Attorney was that the exclusion of Mormons from the grand jury was authorized by Section Five of the Edmunds Act. As the grand jury would have to investigate cases of polygamy and unlawful cohabitation, it was held that polygamists, or men who believed in the rightfulness of plural marriage, and whose sympathies would therefore bias their judgment, ought not to be members of that body.

Mr. Richards, in his argument, took the ground that this grand jury was not one specially constituted to seek out polygamy cases, but was formed for the purpose of inquiring into all kinds of offenses against the laws of the United States. The Poland Law was plain in its provision that both Mormons and Gentiles should be represented in the jury box, and there was no cause to exclude the fifteen Mormon jurors, who were conceded to possess all the statutory qualifications. The Edmunds Law did not preclude Mormons from sitting on grand juries by which all kinds of indictments were to be found; it only applied to petit jurors summoned to try certain cases based upon indictments previously presented. The empaneling of a grand jury was not a prosecution for polygamy or bigamy, any more than for murder or burglary. If, however, Mormons could be asked certain questions and excused on making affirmative answers, then non-Mormons should be asked the same questions. In this case they had not been interrogated as to whether they believed it right to cohabit with more than one woman, which was as much a disqualification as belief in polygamy. A person suspected of



*Peter Gillespie*



crime should be shielded from baseless and vexatious indictments, illegally found, as much as from conviction by a packed jury.

Assistant U. S. Attorney Varian, answering Mr. Richards, contended that the provisions of the Edmunds Law regarding the qualifications of jurors in polygamy cases were applicable to grand jurors as well as to petit jurors. The fact that Mormons had been asked certain questions which were not put to non-Mormons had no weight, since that matter was purely optional with the Prosecuting Attorney. The only ground for the motion to set aside the indictment would be to prove that the requisite number of names had not been drawn from the jury box; that the notice of the drawing had not been given in the manner provided by law; and that the drawing had not been done in the presence of the proper officers. But these steps had been regularly and fully complied with and there was therefore no legal standing for the motion.

Mr. Richards replied, closing the argument, and Judge Zane took the matter under advisement until next morning, when, in the presence of a full bar, interested auditors of the proceedings of the day before, he delivered his decision. It sustained the view taken by the Prosecuting Attorney, and overruled the motion to set aside the indictment.

The day after the rendering of this decision—which, coming after the more important ruling on the open venire question, did not create much surprise—Rudger Clawson was arraigned in the District Court and entered a plea of not guilty. His trial was set for Wednesday the 15th of October.

At the opening of court that morning, in the presence of an immense throng, the case was called and proceedings began.\* The

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\* Meantime Judge Zane had made rulings in two other polygamous cases which had not come to trial. On October 3rd a demurrer in the case of the United States vs. John W. Young had been filed in the Third District Court, and on the following day had been argued and submitted. The demurrer stated that "said indictment charges that defendant feloniously married Elizabeth Cantfield, having at the time a living and undivorced wife, Clara Jones, and again in the same count charges the defendant with feloniously

names of the witnesses summoned—a small host—were read by the court crier, and such of them as were present answered as called. The empaneling of the trial jury then took place. Several jurors having been challenged and excused for not answering satisfactorily questions as to their belief in the rightfulness of plural marriage, David Archibald, a blunt, outspoken Scotchman, was called and interrogated.

MR. VARIAN.—“Do you believe it is right for a man to have more than one living and undivorced wife at the same time?”

WITNESS (with a strong Gaelic accent).—“Your honor, am I here to be tried for my belief?” (Sensation, laughter and applause.)

JUDGE ZANE (sternly, and rapping sharply for order).—“Answer the question.”

marrying Christina Dumke, the said Clara Jones and the said Elizabeth Canfield being then still living, the said Clara Jones being his legal wife.” The attorneys for the defendant were Sheeks & Rawlins, F. S. Richards and Le Grand Young. The demurrer was argued by Joseph L. Rawlins for the defendant, and C. S. Varian for the prosecution. Monday, October 6th, Judge Zane delivered a decision sustaining the demurrer and quashing the indictment, on the ground that it was improper and wrong to charge two felonies in the same count. Mr. Varian had argued that but one felony was charged, since the second marriage was barred by the statute of limitations, but the Judge held that said second marriage was nevertheless a felony, though it could not now be prosecuted, and, since the Court had no power to strike out part of the indictment as surplus, and it would be impossible to try one case without its being cumbered and prejudiced by the other case, the demurrer would be sustained. An order was at once issued discharging the defendant and exonerating his bondsmen.

October 9th Judge Zane heard arguments on a motion to quash an indictment for bigamy (polygamy) found against John Fowler of Ogden, in 1879. The grounds for the motion, which was originally made in November of that year but had since been allowed to rest in obscurity, were the illegality of the grand jury for the following causes: That the notice of the drawing of said grand jury was not given as provided by law; that nine of the jurors were drawn from the jury box without any notice whatever; that a number of them for their belief in plural marriage (before there was any Edmunds Law to cite) were unlawfully excluded from service; that the name of one juror was not on the jury list for that year; that two of the jurors had served within two years next preceding the empaneling of the grand jury; that one was not a resident or tax-payer of the Territory; and that five of them had been drawn at the April term preceding and were therefore ineligible to serve. Messrs. Richards & Williams and Robert Harkness argued for the motion, and U. S. Attorney Dickson against it. The motion to quash was overruled.



WITNESS.—“Well, I believe the ancient patriarchs and prophets—”

JUDGE ZANE.—“We don't care anything about that; answer the question.”

“Well,” urged the witness, “I say the ancient patriarchs—”

Again he was interrupted by the Judge and asked to answer the question.

“Your honor,” Mr. Archibald finally said, with some vehemence, “I believe it's a revelation of God to the Latter-day Saints that they are required to obey.”

Thereupon he was challenged and excused.

G. M. Forbes, a non-Mormon, surprised the Prosecuting Attorney by declining to answer the same question. He was asked if he had conscientious scruples, and he replied that he did not think the question was properly worded. If he were asked if it was right to violate the law of the United States, he would answer no; but he did not feel inclined to reply to the question put to him.

“Do you mean that you do not consider such things morally wrong?” asked Mr. Varian.

“I do not necessarily mean that,” replied the witness.

MR. VARIAN.—“You mean that it would depend more upon the law than upon moral grounds?”

WITNESS.—“I do.”

He was then informed that there was a law against polygamy and cohabitation with more than one woman, whereupon he said that he did not think it right to violate the law. He was passed.

Louis Oviatt admitted being a Mormon, but stated that he did not believe it right for a man to have more than one living and undivorced wife, or to live in the practice of cohabiting with more than one woman. He believed in upholding the laws of his country, and knew of nothing that would prevent him from giving a fair and honest verdict in the case, on the evidence to be presented. He was challenged and excused, the prosecution using one of its three peremptory challenges in his case.

When the hour for adjournment arrived, it was found that ten of the twelve jurymen, all non-Mormons, had been obtained. It was also discovered that the list of petit jurors—drawn from the jury box prior to its depletion by the empaneling of the grand jury—was nearly exhausted, and the main question in the minds of all interested in the trial was, Will the Judge, on the morrow, order the issuance of another open venire?

The answer made by the public to its own query was in the affirmative; an answer fully vindicated by the issue. Next morning Mr. Varian stated to the Court that the list of petit jurors, with the jury box itself, was exhausted, and requested that an open venire issue for the purpose of filling up the panel of the trial jury. The defense entered an objection, which was promptly overruled by the Court, and the open venire was ordered to issue. A few minutes later, Marshal Ireland sallied forth with the writ authorizing him to select six men and bring them into the presence of the Court. A little after eleven o'clock the Marshal returned with Messrs. O. Von Trott, A. O. Palmer, J. C. Conklin, Edmund Wilkes and Ellsworth Daggett. The latter two were accepted. The defense challenged Charles Gilmore, a rabid Anti-Mormon, and endeavored to get him off the jury; but having exhausted their three peremptory challenges, and the prosecution interposing an objection, that individual was permitted to remain. The panel as completed and sworn stood as follows: E. W. Loder, Thomas Sappington, M. W. Davis, G. M. Forbes, D. C. Booth, George W. Richmond, Charles Gilmore, J. F. Woodman, William Husbands, D. W. Scribner, Edmund Wilkes, Ellsworth Daggett. Challenges were interposed by the defense to the entire array, and to the two last-named jurors individually, but the challenges were overruled.

All but two of the witnesses were now required to withdraw. The exceptions were Miss Alice Dinwoodey, half-sister to Mrs. Florence Clawson, the defendant's wife; and Mr. O. F. Whitney, who was present, not only as a witness, but as a representative of the press.

Miss Alice Dinwoodey was the first witness called. In answer

to questions put by Mr. Dickson, she stated that the defendant married her sister Florence in August, 1882, and that she was present at the wedding reception given by them at her father's residence in the Seventh Ward. The pair lived there for many months, as husband and wife, and a child was born to them. They subsequently removed to their own home in the Eighteenth Ward, where the witness visited them several times. Witness knew Lydia Spencer, the alleged plural wife of the defendant, and had met her at his house in the latter part of 1884.

MR. DICKSON.—“Were you introduced to Lydia Spencer at that time?”

The defense objected to this question, on the ground that the purpose immediately in view was the proving of the first marriage, and that any question tending to prove an alleged polygamous marriage was irrelevant and immaterial at this stage.

This led to a discussion, prior to which it was discovered that the indictment had not been read to the jury. That formality was accordingly executed.

The indictment charged the defendant with polygamy and unlawful cohabitation in that he had married on August 1, 1882, Florence Ann Dinwoodey, and on June 1, 1883, while she was still his wife, had unlawfully married Lydia Spencer, and had lived and cohabited with both women as his wives. Both marriages were alleged to have taken place at Salt Lake City.

The indictment having been read, the discussion mentioned took place. The Court overruled the objection of the defense and permitted the witness, Alice Dinwoodey, to be interrogated on the point at issue.

She stated, in answer to the question—“Were you introduced to Lydia Spencer at that time”—that she was introduced to Lydia Spencer by Mrs. Florence Clawson; that the former was treated like one of the family, and had a child who was treated in like manner. The witness knew nothing, except from hearsay, about the defendant's relations with Lydia.

Henry Dinwoodey, the defendant's father-in-law, was next examined, but nothing additional was elicited from him.

James E. Caine, the principal witness for the prosecution, then took the stand. This young man had been a fellow employe of the defendant at the wholesale dry goods house of Spencer Clawson, Rudger's half-brother. He stated that he had seen Lydia Spencer at "the store" many times from March, 1882, to July, 1883; that she came to see Rudger Clawson, and that in April of the latter year he had conversed with the defendant on the subject of his relations with her.

MR. DICKSON.—"What was said by you and the defendant?"

The question was objected to by the defense, but the Court overruled the objection and allowed the witness to answer.

MR. CAINE.—"I asked him if that was his second wife; he said 'yes.' I never after that conversed with him on the same matter."

The witness stepped down, but after a whispered consultation with the Prosecuting Attorney, was recalled.

MR. DICKSON.—"Mr. Caine, did you ever have any conversation with the defendant, after that, in relation to the first conversation?"

WITNESS.—"I did."

MR. DICKSON.—"When was it?"

WITNESS.—"Last night, or night before last."

MR. DICKSON.—"What was it?" (Objection made and overruled.)

WITNESS.—"I had been subpœnaed with the other clerks. The defendant came to me and said, 'I understand that you have said you asked me if Lydia was my second wife, and that I answered yes.' I replied, 'Yes, I said so.' He then declared that he did not say 'yes,' or if he did that it was qualified as 'Yes, that's what they say,' or something to that effect. I replied that I did not hear him say anything but 'yes.' Said he: 'Well, you admit there is a doubt.' I answered, 'Yes, there is a doubt, but not in my mind.' I meant that the doubt was in his mind."

John M. Young testified that he had seen the defendant enter

the home of Lydia Spencer's mother, in the Tenth Ward, Lydia then residing there. He had seen him coming and going frequently, at midday, in the evening, and leaving in the morning. Once the witness, who lived in the same neighborhood, had carried a parcel from Lydia to the defendant. He frequently had seen them together at the Theater and at other places. On one occasion they had taken supper at the house of the witness.

Walter J. Beatie was examined for the purpose of fixing certain dates at which the defendant entered and left the employ of Zion's Co-operative Mercantile Institution.

Spencer Clawson then took the stand. He stated that Lydia Spencer had frequently been at his store; that she came to obtain work and would speak to the first clerk she happened to meet; she had never bought any goods at his store and charged them to the defendant.

MR. DICKSON.—“Do you remember the incident of a parcel being picked up in your store; of yourself or some one asking, ‘Whose is this?’ to which some one answered, ‘Rud’s wife’s;’ of his asking, ‘which one?’ and your then remarking, ‘That’s a good piece of evidence?’”

WITNESS.—“I have no recollection of making such a remark, or of such an incident ever occurring. I remember something about a package, which some one said was Lydia Spencer’s, and I ordered it to be rolled up and laid away for her.”

Mr. Clawson was excused, after being requested to have his account books in court at 10 o’clock, Friday morning, October 17th. The Court then adjourned till that time.

Punctually upon the hour—for Judge Zane was as prompt as he was expeditious—the Court reopened. While waiting for the jury, word was communicated to the Judge that two jurors who had failed to respond to summons issued before the trial, were in the court room. These men, a Mr. Smith and a Mr. Cullenan, were requested to step forward and state the reasons for their non-appearance at the time required.

Mr. Smith did not immediately grasp the situation, but evidently supposed that he was to be sworn for some purpose. Reaching the clerk's desk, he threw up his hands as suddenly as if he had been beset by highwaymen and ordered to "stand and deliver." A ripple of merriment passed over the audience, and even the Judge, Clerk and attorneys could not repress their smiles. This seemed to reassure Mr. Smith, who lowered his hands and answered the questions put to him. He had been sick and could not come before. He was excused with a word of advice on punctuality. The other juror then walked forward. Reasons with him were "as plenty as blackberries," and, unlike the redoubtable Falstaff, he did not object to "giving them upon compulsion." He was not well, had not been served, had a bad cold, and in fact "Your honor," said he, "my hearing is not good enough to act conscientiously as a juror." The idea of a juror with his conscience in his ear struck the Court and everyone present as particularly funny. The Judge, after another word of advice on promptness in responding to a legal process, dismissed the defaulter with a benignant smile, and called the convulsed assemblage to order. The absent jurymen having arrived, the trial was resumed.

The following named witnesses testified during the day: Spencer Clawson, who exhibited his account books, in which the prosecution failed to find anything to suit their purpose; Heber M. Wells, ex-secretary of the Eighteenth Ward Mutual Improvement Association, by whom it was proved that one Lillie Clawson was a member of that Association, but not that she and Lydia Spencer were identical; Sidney B. and Stanley H. Clawson, brothers of the defendant; R. V. Decker and Orson Rogers, other employes of Spencer Clawson's; Bishop H. B. Clawson, the defendant's father; and Mrs. Mary Jane Spencer Auer, mother of Lydia Spencer, from none of whom was anything material drawn forth.

Then occurred the sensation of the day—the placing of President John Taylor upon the witness stand. The court room was crowded almost to suffocation, many extra spectators thronging in to



*John W. Smith*





hear the Mormon leader's testimony, which was listened to with breathless interest.

The object in the examination of President Taylor was to fix the fact of the defendant's marriage with Lydia Spencer, and to obtain information regarding the marriage record supposed to be kept at the Endowment House. We shall merely give the main questions and answers in the examination of the venerable leader, who, with dignified but respectful mien, entered the court room and took the seat indicated by the officer in attendance.

QUESTION.—“You are the President of the Church of Jesus Christ of Latter-day Saints?”

ANSWER.—“Yes, sir.”

“Is there a sacrament of marriage, or a ceremony, as taught by the Church?”

“Yes, sir.”

“The law of the Church is opposed to and forbids intercourse between the sexes—that is, outside of the marriage relation?”

“Yes, sir.”

“There is a doctrine of the Church, is there not, Mr. Taylor, of plural marriage?”

“Certainly.”

“Is there any place called an Endowment House, a Temple, or known by any other name, which is set apart for the celebration of plural marriages?”

“Not specifically. The rite of plural marriage can be performed in other places.”

“Would they [the parties desiring to marry] not require a dispensation from the Church to authorize its celebration elsewhere?”

“Yes, sir.”

“Who gives the authority?”

“I give that authority. It would be the authority to get married, no matter where it was.”

“Is there any other person authorized to grant the dispensation?”

“There are persons I might appoint.”

“Have you conferred upon any person that authority within the past three years?”

“Yes, sir.”

“Who?”

“Sometimes Joseph F. Smith, sometimes George Q. Cannon.”

“Do you keep any record of the appointments?”

“No, sir.”

“Is there any record of marriages?”

“I am not acquainted with the records.”

“Can you say whether there is or not?”

“I think likely there is.”

“If you wanted to see it, is there any means of ascertaining where it is?”

“I could find out by inquiry.”

“Will you be good enough to do so?”

“I am not good enough to do so.” [Laughter.]

“Who is the custodian of the records?”

“I cannot tell you. I know nothing of these details.”

“Is it not a fact, Mr. Taylor, that plural marriage is a secret rite, a secret ceremony?”

“It is a secret to some, and not to others.”

“Are not the parties who enter into the contract of plural marriage, and those who are present in officiating, sworn to secrecy?”

“No, sir.”

“What is the ceremony of plural marriage?”

“I do not propose to state it.”

“Do you decline to answer?”

“I do.”

“Are you acquainted with the defendant?”

“Yes.”

“Do you know whether he has taken a plural wife or not?”

“I do not.”

QUESTION BY MR. RICHARDS.—“President Taylor, in your direct examination you spoke of having appointed or authorized persons to

celebrate plural marriages. Was the authorization general as to marriage, or confined to plural marriage only?"

PRESIDENT TAYLOR.—“It was general in all these matters and as to things performed in the House.”

“Are there not various other rites and ordinances performed in these houses?”

“Yes, sir.”

“Then in giving an authorization to go there you would not signify or indicate for what purpose?”

“I do not know for what purpose they go.”

Such was the substance of the President's testimony. After passing a few words with Judge Zane, the witness, being excused, left the court room, followed by his friends and a swarm of curious spectators.

Elias Smith, Sr., C. J. Thomas and Angus M. Cannon, Sr., were examined with a view to finding out something about the Endowment House records and the defendant's plural marriage. Nothing important was elicited, much to the chagrin of Messrs. Dickson and Varian.

Waldemar Lund, another of Spencer Clawson's employes, John D. and Henry Spencer, half brothers to Lydia Spencer, were also interrogated with as little success. Arthur Pratt was put upon the stand to testify as to stage-coach routes between Salt Lake City and St. George—the latter a Temple city. An adjournment was then taken until Saturday the 18th.

On that day President George Q. Cannon was put upon the stand and questioned at length regarding Endowment House records, particularly those of marriages performed by himself and others. The result was the same as in the examination of President Taylor.

Mrs. Susan E. Smith, a resident of West Temple Street, opposite Temple Block, testified that Lydia Spencer occupied rooms at her house from June, 1884, till a few days before the beginning of the trial. She had not seen her since. The defendant had visited Lydia while there.

James E. Caine was recalled for the defense, and repeated the first conversation that he claimed to have had with the defendant. There was no one present but himself and the defendant on that occasion. Witness thought that Orson Rogers overheard the second conversation between them. He added the fresh item that he said to the defendant, when the "doubt" was mentioned: "I don't care a d—n; if I am asked, I'll have to tell the truth."

MR. BENNETT.—"Is it not true that when the defendant said there was 'a doubt' as to what was said by him in the first conversation, you replied: 'Well, by Jove, I don't know what you did say?'"

WITNESS.—"It is not true."

Other witnesses were T. A. ("Fred") Clawson, brother to the defendant; Orson F. Whitney, Bishop of the Eighteenth Ward; Robert Patrick, his first counselor; Juliette Croxall, Horace G. Whitney, George Reynolds, William Kraut and Mary Kraut. Their testimony was not important.

Mr. Dickson stated that subpoenas had been issued for Lydia Spencer and Margaret Clawson, the latter the defendant's mother, but they had not been found. He mentioned the matter so that it would answer any question in the minds of the jury as to why these witnesses were not present.

Judge Harkness, for the defense, objected to this statement as an inuendo calculated to prejudice the jury, who must decide the case on the evidence brought before them, and not on suppositions. The Court sustained the objection, and the prosecution rested.

The defense put upon the stand Waldemar Lund, Orson Rogers and R. V. Decker, to impeach the testimony of James E. Caine. Lund testified to having overheard the conversation between Caine and the defendant, in which the former asked the latter if Lydia Spencer was his second wife. The defendant's answer was: "They say so." Mr. Rogers stated that he was present when the question of the "doubt" was discussed by defendant and Mr. Caine, and that the latter said: "By Jove, I don't know what you did say;" later, Caine maintained angrily that the defendant said "Yes," and declared that

if he was asked he would have to tell the truth. Mr. Decker's testimony was practically the same as that of Mr. Rogers.

Marshal Ireland was the last witness called. He was questioned by the prosecution as to the arrival and departure of trains at and from Salt Lake City in 1883.

The arguments of counsel occupied the whole of Monday, October 20th, Mr. Varian making the opening plea for the prosecution, Messrs. Bennett and Richards following for the defense, and U. S. Attorney Dickson closing. All the speeches were able and interesting. Mr. Dickson's last words to the jury were:

Gentlemen of the jury, let me trust that no one of your number will be frightened by the assertions that if the defendant were pronounced guilty, the Mormon people would have it to say that he was so found because his jury were Gentiles. If you have any reasonable doubt let him have the advantage of it, but I ask you, do not be frightened out of what is right and just.

Next morning Judge Zane charged the jury and they retired in custody of Bailiffs Hurd and McCurdy to consult upon a verdict. The day wore away, evening approached, but no word came from the jury. Finally messages were received from them stating that they were unable to agree, and asking to be discharged.

At eight o'clock Judge Zane reopened court, and after waiting over an hour sent for the jury. The twelve members came in, jaded and careworn, and in answer to the Judge's question if they had yet agreed upon a verdict, Major Wilkes stated that they had not, nor was there any prospect of an agreement; to which the other jurors assented. "How are the jury divided?" asked Mr. Dickson. "Eight for conviction and four for acquittal," said the foreman. The Judge then told the jury they were discharged.

Such a result, though generally expected, was anything but pleasing to the prosecution. The failure of a non-Mormon, anti-polygamy jury to effect the purpose for which, to all appearances, it had been formed, was, in the eyes of the crusaders, almost a crime. The Anti-Mormon press fiercely assailed the four jurors who had stood out for acquittal, though they had but followed the injunction

of the Prosecuting Attorney, that if they had any reasonable doubt of the guilt of the defendant, they were to "let him have the advantage of it."\* The course pursued by the Anti-Mormon organ toward the four jurors was in keeping with its conduct all through the trial. Its columns teemed with abuse of witnesses whose testimony was at all favorable to the prisoner at the bar. Six of the jurymen, whose four colleagues were the targets of the *Tribune's* assault, came to their defense in the following communication, published in that journal after the close of the trial:

*Eds. Tribune:*

In your issue of today is an article, as an editorial, entitled "The Beautiful Quartette," in which, in our opinion, the dissenting jurors in the Rudger Clawson case are very unjustly criticised. As jurors in that case we were all of us in a position to know at least as much of the evidence in the case as your reporter or informant could know; and a ten-hour interview with the dissenting jurors in the jury room enables us to judge better than you can of the freedom with which they discussed the matter and of the probable motive actuating their verdict. Now as a matter of fact the dissenting jurors, or at least a majority of them, discussed the matter freely, and in such a manner as to lead us to believe that their verdict, while it differed from ours, was honestly arrived at and free from improper motives.† Even were the facts otherwise, we regard the singling out by name of jurors, and the bringing against them of distinct charges of cowardice, stupidity or moral obtumescence, in a powerful journal, as not only unjust to the individual jurors themselves, but as tending to defeat the ends of justice by leading men of self-respect to avoid a position where they are likely to be individually attacked in such a manner.

[SIGNED]

EDMUND WILKES, Foreman.

ELLSWORTH DAGGETT.

THOS. SAPPINGTON,

D. C. BOOTH.

G. W. RICHMOND.

WM. HUSBANDS.

Six of the Jurors in the Rudger Clawson case.

SALT LAKE CITY, Oct. 22, 1884.

\*The four dissenting jurors were James F. Woodman, E. W. Loder, D. W. Scribner and G. M. Forbes.

†The *Tribune* had said: "While the eight did all they could to convince the four that the evidence was conclusive as to guilt of defendant, the four either could or would not be convinced. The four never attempted to give any reason for the faith that was within them, nor did they attempt to prove to the eight why they thought defendant was not guilty. They would listen to the arguments of the eight men but would show no disposition to be moved by them, nor would they by argument or otherwise make any

A most unexpected turn in affairs was taken, immediately after the discharge of the jury on the night of October 21st. It was the discovery of the missing witness, Lydia Spencer, and the service upon her of papers requiring her to appear in the District Court at ten o'clock next morning. She was found at the home of Mrs. Susan Smith, opposite Temple Block, where she had rooms, from which she had been absent several days. Suspecting that she would reappear soon after the trial, the United States Marshal sent his deputies to watch the Smith house. It was said that they followed the defendant thither. At all events, on the night of the 21st every tree, shed, and other object in the vicinity capable of casting a shadow or affording concealment, was utilized by the wide-awake officials. One or more of them finally presented themselves at the door of the dwelling, and on its being opened to their knock, they served process upon the witness, Lydia Spencer, who was within.

Simultaneously another squad of deputy marshals invested the residence of Mrs. Margaret Clawson, in the Twelfth Ward. Captain Greenman rang the front door bell, and Bishop Clawson appeared upon the threshold. Being asked his business, the officer replied that he wished to see Mrs. Clawson.

"What do you want of her?" inquired the Bishop.

"I have a subpoena to serve," said Greenman.

"She's not at home," said the master of the house.

"Well, I want to search the place," persisted the Captain.

"You can't search my house without papers authorizing you to do so," was the resolute reply.

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attempt to prove from the evidence that defendant was not guilty. They evidently had made up their minds from the start, and all the evidence in the world could not have moved them from the position in which they had planted themselves."

It leaked out that a fight had occurred in the jury room between two of the jurors, one of whom favored the acquittal and the other the conviction of the defendant. The latter—who was probably the *Tribune's* informant—assigned a base motive to the former for his position, whereupon the insulted man called his traducer a liar. They clinched and had to be separated by the bailiff.

The officer, having no search warrant, saw that he was at a disadvantage, and so departed with the good-natured threat that he would "get her anyhow."

While this dialogue was in progress, the inmates of the house, in a spirit of mischievous mirth, put into execution a little plot for their own diversion and that of the prowling deputies. One of the Clawson boys was dressed out in a gown, bonnet and shawl belonging to the lady who was "wanted," and amidst a profusion of crocodile tears and great apparent trepidation, hastily left the house by a side entrance. Getting into a carriage, the fugitive was driven rapidly away by another of the conspirators against the peace and dignity of the watchful officials. As the carriage sped down the street, half a dozen of the Marshal's men, till then in concealment, ran after it as if their hopes of happiness in the next world, or of promotion in this, depended on overtaking the fast disappearing vehicle. One of them succeeded in catching hold of the hind straps and lifting himself into a semi-sitting posture, where he grimly held on while the carriage, with its fun-convulsed occupant, bounced along stony streets or dashed through pools and puddles, splattering with mud the hapless deputy until his identity would have been a mystery to his own mother. Finally he fell off and the wild goose chase ended.

But while neither the real nor the pseudo Mrs. Margaret Clawson was captured, the main witness wanted by the prosecution had been secured. Lydia Spencer, in response to the summons served upon her that night, appeared in court at ten o'clock next morning.

As soon as it was known that she was present, Mr. Varian, the assistant prosecutor, arose and informed the Court of the fact, and moved that a new trial in the case of the United States vs. Rudger Clawson take place that afternoon.

Mr. Richards, for the defense, opposed the motion, representing that it would work hardship upon witnesses summoned from distant parts for other cases. Moreover, his associate, Mr. Harkness, would be out of town that day. The witness, Lydia Spencer, being in custody, and it not appearing that she was trying to evade any process



of the Court, Mr. Richards urged a postponement for a month or a week, and the avoidance of what seemed to him an exhibition of unseemly haste.

The prosecution, however, insisted on an immediate re-trial of the case, and the Court granted the motion.

Accordingly at 2 p. m. the case was called. All the parties being present, proceedings at once began. An affidavit was presented by Judge Bennett, who, in behalf of the defendant, moved for a change of venue on the following grounds:

1. The great prejudice of the people of Salt Lake County and the Third Judicial District.
2. The orders and rulings of the Court under which jurors selected to try this case were all anti-polygamists.
3. The jury box being exhausted, jurors to try this case would have to be brought in on an open venire.
4. The Salt Lake *Tribune*, a paper widely circulated and very influential among non-Mormons, by its abuse of witnesses and jurors during and after the late trial, had aroused a bitter prejudice against the defendant, who therefore felt that he could not have a fair trial in this court.
5. For these reasons he asked to be granted a change of venue to some other court in the Territory.

The matter was argued by Judge Bennett for the defense, and by Mr. Varian and Mr. Zera Snow for the prosecution. The Court overruled the motion. An exception was taken and a motion made for a continuance till the next term of court. This motion was also overruled.

A jury was then empaneled, by the same process as before, except that in this instance all the jurors were selected by open venire. It was late in the forenoon of Friday, October 24th, when the panel of the jury was completed. It stood as follows: J. J. Farrell, P. E. Fitzgerald, Charles Connor, Charles Barnett, Henry Denhalter, J. B. Griffin, John Knapp, W. H. H. Bowers, E. B. Wilder, A. Bechtol, J. W. Mason and Thomas Smith.

The witnesses first examined were Miss Alice Dinwoodey, Henry Dinwoodey, Hattie Jones—a hired help at Mrs. Annie Dinwoodey's—James E. Caine and John M. Young. These having testified, and

nothing new being elicited—"Call Lydia Spencer," said the United States Attorney.

There was a general stir of interest as the lady named calmly arose and walked toward the witness stand. Her face was pale, her lips compressed, and there was an air of determination about her as she took the chair and confronted her inquisitors. Asked by the clerk to stand up and take the oath, she said: "I decline to take it."

MR. DICKSON.—"Will you affirm?"

WITNESS.—"No, sir."

"What's your reason?"

"Well, I just decline to take it."

MR. VARIAN.—"Will your honor instruct the witness in this case?"

Judge Zane repeated the first questions put to the witness, who again answered that she would neither take the oath nor affirm, and in reply to other queries by the prosecution, stated that she utterly refused to be a witness in the case.

The prosecution moved that the witness be committed for contempt; not merely for five days—the limit of such punishment under the laws of the Territory—but for any reasonable time in the discretion of the Court. This being a United States case, the contempt was punishable under the laws of the United States.

Arguments on the motion having concluded, Judge Zane said: "This is a case of contempt, there can be no question, and the order will be made giving the custody of the witness to the Marshal, to be held until the final judgment is rendered on this matter." The Judge then turned to the witness and endeavored to change her resolution. Failing in this, he added: "You take a fearful responsibility in undertaking to defy the Government. You stand as a criminal before the law. It is your duty to testify, and you must testify or take the consequences. If you are not ready to determine now, think about it before morning—think about it seriously. You will be committed to the custody of the Marshal until morning."

The court then adjourned and the recalcitrant witness was taken to the Penitentiary, where she passed the night.

Next morning—Saturday, October 25th—she was brought into the presence of the crowded court. Her pale face and pained expression gave evidence of a sleepless night—a night of mental agony. Her appearance awakened a feeling of sympathy and compassion in the hearts of all capable of any but the sternest emotions. Yet it was not for herself, sensitive as she was, susceptible to the embarrassment and humiliation to which she had been subjected, that she wore that look of pain, that air of anxiety and distress which rested upon her pallid countenance like a cloud against the silvery paleness of the moon. It was for the man she loved, her husband in the sight of heaven and according to the law of God, as she believed; man's laws and man's belief to the contrary, notwithstanding. The sorrow now felt by the brave girl, who would willingly have gone to prison for an indefinite period for the sake of that husband, the father of her child, was due to the fact that he had requested her to remain silent no longer, but to disclose the truth touching their marital relations.

“Call Lydia Spencer,” rang out the voice of the Prosecuting Attorney, as soon as the Judge, who, contrary to his habit, was a little late that morning, had entered and taken his seat. The lady arose from where she sat and walked up to the witness chair. The following dialogue ensued:

JUDGE ZANE.—“Are you willing to be sworn this morning?”

WITNESS.—“Yes.”

Amid a deep silence and the most intense interest on the part of a present, the lady arose, held up her hand and assented to the usual oath. She then resumed her seat and Mr. Dickson, in a voice “soft, gentle and low”—“an excellent thing,” not only “in woman,” but in a prosecuting attorney\*—put to her the following questions, to which she gave the appended answers:

“Miss Spencer, are you married?”

“Yes, sir.”

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\*Mr. Dickson was naturally a gentleman. He seldom lost his temper, even in the heat of repartee.

“To whom?”

“To Rudger Clawson.”

“When were you married?”

“In 1883.”

“Where?”

“In this city.”

“What month was it?”

“I don't remember.”

“It was in the year 1883?”

“Yes, sir.”

“And in this city and county?”

“Yes, sir.”

MR. DICKSON.—“That's all.”

JUDGE ZANE (to witness.)—“You are discharged.”

The lady then left the court-room, escorted by Bishop H. B. Clawson.

The case, by consent of counsel on both sides, was now submitted without argument. The Judge charged the jury and they retired. Seventeen minutes later they returned and by their foreman, W. H. H. Bowers, presented a written verdict stating that they found the defendant, Rudger Clawson, guilty on both counts of the indictment; that is, for polygamy and unlawful cohabitation.

The United States Attorney now asked that final judgment be pronounced, and that the defendant, pending further proceedings, be remanded to the custody of the Marshal and that he be not admitted to bail. A counter motion was made by Judge Bennett, who requested a stay of judgment for ten days to enable the defense to prepare a bill of exceptions upon which to base a motion for a new trial; also to prepare an appeal. Judge Zane granted a stay of judgment until the 3rd of November.

Arguments upon the motion to deny bail to the defendant were now heard. Messrs. Dickson, Varian and Snow argued in support of the motion, and Messrs. Bennett and Richards against it. The Judge had decided to grant the motion and commit the defendant to



*John Druce*



the custody of the Marshal, when Mr. Bennett called attention to the fact that the statute in which the form of bail was given provided that the bail extended until the defendant was brought up for judgment. This caused the Court to hesitate, whereupon Messrs. Snow and Dickson returned to the charge, urging that it was the duty of the Court, after a conviction of felony, to refuse to admit the defendant to bail.

Mr. Richards then arose and spoke as follows:

If the Court please \* \* \* I have not until recently been in regular practice at this bar for some years past, but I am informed by gentlemen here who know, as I believe, that it has been the universal practice of this court to allow a defendant to go on bail, not only after a verdict and before judgment, but pending an appeal; and I know that in all prosecutions for bigamy and polygamy that have occurred in this Territory, the defendant in each case has been allowed to go on bail. It has never been denied. While we did not want to enter into the merits of this question and discuss to-day the right of the defendant to bail pending the appeal, believing that the exercise of your discretion to allow him bail until the judgment was sufficient at this time, I feel it my duty, in justice to my client, to refer briefly to his right in this regard.

Your honor will remember, a short time ago in a discussion in regard to the construction of a Territorial statute in connection with the act of Congress known as the Poland Law, I had the honor to call your attention to our peculiar situation in this Territory with reference to the legislative power of Congress and that of the Territorial Legislature. Congress, the paramount power, has said that in cases of this kind writs of error shall lie to the Supreme Court of the United States. No person, then, can be conclusively presumed to be guilty if he takes the proper means to prosecute his appeal, until his case has been passed upon by that court of last resort, and we insist here to-day, that it is a right which this defendant has, to go on bail during the time his appeal is pending.

The prosecuting officer makes the broad admission that we are entitled to a stay of execution during this appeal, but he also says that the defendant should be held in custody in the mean time. Is not this a distinction without a difference? Is it not something that is going to work a double hardship on the defendant? It is a rule that never has been admitted in this court: it is a practice that never has been followed in this Territory; and I insist, if your honor please, that it never should become the practice. What! a man convicted, but having the right of appeal, must remain in custody two, three, or five years pending his appeal; imprisoned but not serving out his sentence? The sentence may be for three years and his appeal may be pending two years: at the end of the latter time the sentence is affirmed. What is the result? The man has been in custody two years, waiting to find out whether he has been legally convicted, and if so, he has to serve two or three years more: in other words, by appealing he gets five or six years' incarceration in the penitentiary, when if he had not taken the appeal, he would only have three years'

imprisonment. On the other hand, if the case should be reversed, and the man shown to be innocent, he would have served two or three years in the penitentiary without a legal conviction.

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We insist that it would not only be a just and proper exercise of discretion to permit the defendant to go on bail, but we believe it to be his constitutional right. I use the word constitutional because the act of Congress giving him the right to appeal, is to this Territory what a constitution is to a State.

MR. VARIAN.—Let me make one suggestion to you. The act of Congress giving an appeal does not give an appeal from this court to the Supreme Court of the Territory, and if your construction be the true one, the question could only arise when the case leaves the Supreme Court of the Territory for the Supreme Court of the United States, and the laws of the Territory must govern the preliminary matters of procedure incident to the appeal to the Supreme Court of the Territory. If it be true that you are entitled as a matter of right to bail, pending the appeal given by the Poland bill, that question can only arise when the case leaves the Supreme Court of this Territory. This act gives the defendant no rights that he does not possess under the statutes of the Territory. That question will have to be determined by the Supreme Court, or a Justice of the Supreme Court.

MR. RICHARDS.—I have heard that idea advanced before in this court, when a man had been sentenced to death, and in the teeth of this statute, which says there shall be an appeal allowed in murder cases, this very argument was adduced, that because he had not succeeded in obtaining a certificate of probable cause from the Judge who tried the case, or from one of the other Justices of the Supreme Court, his life might be taken pending the appeal. I say, if your honor please, that the Legislature of the Territory of Utah had no right to enact any provision which would have that effect. \* \* \* The same section in California provides that in cases of murder, the party shall be entitled to a stay of execution pending the appeal as a matter of right without any certificate of probable cause. I say that the courts should construe our statutes so as to stay the execution in cases where parties have been sentenced to death and in cases of bigamy or polygamy where the defendants are entitled to appeal, by act of Congress. I say the courts must give it such a construction as will preserve the defendants in such cases all the rights incident to their appeals, and the Legislature must not be presumed to have intended to render nugatory any provision of the act of Congress: for it had not the power to do so.

MR. DICKSON.—Did not the Supreme Court of the Territory, in the Hopt case, say that they had no power to stay the execution, notwithstanding the death penalty hanging over that man?

MR. RICHARDS.—Yes, sir, and I am glad the gentleman referred to that case. There was a man who had been twice tried and convicted of murder, his case had gone to the Supreme Court of the United States and had been reversed and sent back both times. The defendant was tried the third time and was again convicted and his case appealed to the Supreme Court of the Territory. He applied, through his counsel, to the Judge who tried his case, for a certificate of probable cause, which would stay the execution of the



sentence of death imposed. That was refused. I will not say anything about why it was refused. Everybody who knows anything about the circumstances knows the public sentiment and feeling in regard to the matter. But that certificate which would have stayed the execution of the sentence was refused. The case went to the Supreme Court and the court said that it had no power to stay the execution, but recommended that the Governor grant the prisoner a reprieve so he might live to see the result of his appeal.

If there is anything in that record that the prosecution can point to with pride, let them have all the glory there is in it. For my part I fail to see the law or justice of allowing an appeal and then killing the defendant before his case can be heard. It is the strongest possible illustration of the injustice and unreasonableness of such a rule of procedure as is sought to be established in this case. I apprehend that your honor will not place any such construction on the law. We have a right under the act of Congress to have our case reviewed by the Supreme Court of the United States and we are entitled to immunity from imprisonment at all times, on giving the requisite bail, until the final decision of that Court. The right of appeal in such cases is a real and substantial one; and not a myth or a shadow, as would be the case if the theory of the prosecution were adopted.

At the close of Mr. Richards' speech, Judge Zane, noticing U. S. Commissioner E. T. Sprague sitting near, asked him as to the practice that had prevailed in the Territory with reference to cases of this kind.

Mr. Sprague replied that when a person had been in custody it had been the rule, after conviction, to remand him to the keeping of the Marshal until judgment was passed, and when a person had been on bail he was allowed to continue on that bail until called up for judgment.

The Judge now reversed his original design and ordered that the defendant be allowed to continue on bail until November 3rd; the day set for passing judgment.

Upon that day Rudger Clawson received his sentence. The defense did not carry out their purpose of moving for a new trial, but adhered to their intention respecting an appeal. The defendant having been requested to "stand up," arose. The Judge then asked him if he had any legal cause to show why judgment should not be pronounced upon him. The answer came promptly:

Your honor, since the jury that recently sat on my case have seen proper to find a verdict of guilty, I have only this to say why judgment should not be pronounced: I very

much regret that the laws of my country should come in contact with the laws of God, but whenever they do I shall invariably choose the latter. If I did not so express myself I should feel unworthy of the cause I represent. The Constitution of the United States expressly states that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. It cannot be denied, I think, that marriage, when attended and sanctioned by religious rites and ceremonies, is an establishment of religion. The law of 1862 and the Edmunds Law were expressly designed to operate against marriage as practiced and believed in by the latter-day Saints. They are therefore unconstitutional, and of course cannot command the respect that a constitutional law would. That is all I have to say, your honor.

These bold words, calmly and deliberately uttered, in the midst of a deep silence, seemed to take the Judge by surprise. He leaned back in his chair and meditated. A minute or more passed before the stillness was again broken. Finally Judge Zane, with a look of great gravity, leaned forward and said: "The Constitution of the United States, as construed by the Supreme Court, and by the authors of that instrument, does not protect any person in the practice of polygamy. While all men have a right to worship God according to the dictates of their own conscience, and to entertain any religious belief that their conscience and judgment might reasonably dictate, they have not the right to engage in a practice which the American people, through the laws of their country, declare to be unlawful and injurious to society." Then followed a dissertation on marriage and the various forms of sexual relationship known to history, from promiscuity, polyandry and polygamy, to monogamy, which, the Judge asserted, had emerged from barbarism and superstition to civilization, and was the institution which the "Infinite Source" had manifested as the union that should exist between man and woman in civilized society. The fact that the defendant had been taught that polygamy was right—and his teachers were therefore almost as much to blame as he—would be taken into consideration, but so also would the fact that he, an intelligent man of twenty-seven years,—between twenty-four and twenty-five when the offense was committed—had deliberately violated the law on the ground that there was a higher law which governed his conduct. "I confess," said the Judge, "that I should have been

inclined to fix this punishment smaller than I shall, were it not for the fact that you openly declare that you believe it is right to violate the law."

He then sentenced the defendant, for polygamy, to pay a fine of five hundred dollars and to be imprisoned for three years and six months; and, for unlawful cohabitation, to pay a fine of three hundred dollars and to be imprisoned for six months; the second term of imprisonment to begin at the expiration of the first.\*

The question of bail pending appeal now came up for further argument, on a motion by Mr. Kirkpatrick, that the defendant, until his case had been disposed of by the upper courts, be permitted to continue at liberty under bonds. The motion was argued and overruled. Elder Clawson was then taken to the Penitentiary.†

On the 14th of November his case was before the Supreme Court of the Territory on a writ of *habeas corpus*, and on the day fol-

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\*The full extent of the law in the punishment of polygamy was a fine of five hundred dollars and imprisonment for five years: of unlawful cohabitation, a fine of three hundred dollars and six months' imprisonment. Elder Clawson, therefore, received the full legal penalty for the latter offense, and the same for the former, less eighteen months' imprisonment. In stating that he would have made the punishment lighter if the defendant had not declared that he believed it right to do as he had done, Judge Zane, who had just conceded the point that a man had the right to his religious belief, though his practice must conform to the law, threw himself open to criticism. The *Deseret News* quickly saw the exposed point and thrust in its broad-sword thus: "It would be pertinent to ask Judge Zane how much punishment he inflicted on Mr. Clawson on account of his belief, thus violating his own theory."

† On the day that Rudger Clawson was sentenced the facts relating to a double crime—seduction and abortion—involving the names of a young man once a Mormon and a prominent Gentile physician of Salt Lake City, were made known to the public by the *Deseret News*. The *Tribune* tried to make it appear that it was a piece of Mormon spite-work, trumped up "to blacken the characters of gentlemen," as an offset "to the blow given the Church in the Clawson case." The *News* having what it considered the clearest evidence of the guilt of the parties, resented the *Tribune's* imputation and challenged a full investigation. U. S. Attorney Dickson promptly took up the matter and it was investigated before Alderman Spiers at the City Hall. Proceedings were stopped midway by the marriage of the alleged seducer and the girl whom he was accused of betraying, who then declined to testify against him, and in fact was legally exempt from so doing. The defendants were held to answer to the grand jury, but the affair was ignored by that body.

lowing the decision of the District Court, denying him bail, was unanimously affirmed. The *habeas corpus* case was then appealed to the Supreme Court of the United States. The main issue was up on appeal in the Supreme Court of Utah on January 20, 1885, and three days later the decision of the trial court was affirmed. An appeal was taken to the court of last resort.

Two other polygamy cases came before Judge Zane soon after the trial of Rudger Clawson. One of these cases resulted in a conviction, the second had under the Edmunds Law. The other ended in an acquittal, one of the few issues of the kind witnessed in this class of cases during that period.

The latter was the case of the United States *vs.* John Connelly. It was taken up on the 28th of October. Two days were consumed in empaneling a jury, which was finally obtained by open venire on the morning of October 30th. The most interesting feature of the trial was the placing of Annie Gallifant—the plural wife of the defendant—upon the witness stand. This was the young woman who had been imprisoned in the Penitentiary in November, 1882, for refusing to answer before the grand jury questions as to her relations with this defendant.

The witness having been sworn, the following dialogue took place between her and the Prosecuting Attorney:

MR. DICKSON.—“What is your name?”

WITNESS.—“Annie Gallifant.”

“Are you married?”

“Yes, sir.”

“To whom?”

“John Connelly.”

“The defendant?”

“Yes, sir.”

“You were before the grand jury, were you not?”

“Yes, sir.”

“You have never been married to any one else, have you?”

“No, sir.”

“Do you remember the date you gave before the grand jury?”

The defense objected to these questions, but Judge Zane said: “Let the witness answer.”

WITNESS.—“The question was, Were you married before April, 1881? My answer was, Yes.”

“You did not testify then that you married him in the Endowment House in 1882?”

“I did not.”

Mr. Dickson here drew forth a record, said by him to be the minutes of the grand jury in this case, and proceeded to “refresh the memory of the witness” by calling her attention to what purported to be her testimony before that body.\* Mr. J. L. Rawlins, for the defense, objected to this procedure, but Mr. Dickson, sustained by the Court, continued to exhibit the “minutes” to the witness. He then asked:

“Are you prepared to say now that you did not tell the grand jury you were married in 1882?”

WITNESS (hotly).—“These minutes have been changed; I never said the things put down there.”

“When were you married?”

“February 27, 1879.” †

More questions about the minutes followed, to all of which Mr. Rawlins objected on the ground that by law the proceedings before the grand jury were secret.‡ The objections were overruled and Mr. Dickson went on catechising the witness.

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\* During the Clawson trial these “grand jury minutes” had been made to play an important part in the examination of witnesses, several of whom expressed surprise at the statements attributed to them. Judge Bennett, at one stage, gave it as his opinion that the said “minutes” had been “made up on the street,” whereupon Mr. Dickson offered to verify them by having the clerk of the grand jury sworn as a witness. The matter was not pressed.

† The indictment against John Connelly was found late in 1882.

‡ A law which did not prevent the Salt Lake *Tribune* from obtaining and publishing, during the Connelly trial, a portion of the grand jury minutes in that case. Said the *Deseret News*: “Is not this contempt of court? Or is that offense limited to the refusal of delicate women to answer questions, to them of the most painful character?”

“When did you first cohabit with the defendant?”

“I decline to answer that question.”

“When was your child born?”

“On the 22nd of November, 1882.”

“When did you commence cohabiting with your husband?”

“I decline to answer.”

“Why?”

“Because I don't think it's a decent question.”

“Isn't it decent for a woman to cohabit with her husband?”

“It may be, but it is not decent for you to ask me about it.”

“How long after you commenced cohabiting with your husband was it that your child was born?”

“I decline to answer.”

As nothing further could be made out of this witness—who was a spirited little woman, self-possessed and fearless—she was excused.

A heated tilt between counsel occurred during the examination of another witness in the case—Mrs. Sarah Gallifant, Annie's mother, who Mr. Dickson insinuated was assisting her daughter to conceal the true date of the marriage. Their conduct was characterized as “impudent falsehood and brazen effrontery.” Mr. Rawlins resented the attempt of the Prosecuting Attorney to impeach his own witnesses, and stigmatized the inuendo as “a stump speech injected into the belly of his argument to influence the jury.”

On the afternoon of October 31st, Mr. Dickson stated to the Court that the prosecution had produced all the evidence they could find, and while they were satisfied that it was insufficient to warrant a conviction, they also believed it was perjured testimony that had made it appear that the finding of the indictment was more than three years after the marriage of the defendant with Annie Gallifant. “God forgive me,” he added, “if I do these poor women a wrong; and God forgive them if I am right.”

The Judge, after concurring in the view that perjury had been



*John Hughes*





committed by some of the witnesses, instructed the jury to render a verdict of not guilty. This was accordingly done.\*

The other case of polygamy—the third tried by Judge Zane—was one in which Joseph H. Evans was the party defendant. He was an honest Welshman, a blacksmith, and, unlike the defendant in the Connelly case, a man advanced in years. The trial began on Wednesday, November 5th, and ended on the day following, when the jury, selected, as usual, by open venire, found the defendant guilty of polygamy. It was an easy victory for the prosecution, the defendant's plural wife, Harriet Parry, and her mother, Elizabeth Parry, both being "willing witnesses," bent upon his conviction. Harriet testified that she was married to him on the 6th of May, 1880, at the Endowment House in Salt Lake City, and her mother's testimony, though not that of an eye-witness to the ceremony, corroborated it in so far as to state that the defendant and her daughter had lived together as husband and wife. An effort was made to impeach their testimony, but the defense did not succeed in convincing the jury that the witnesses had not told the truth. The case having been argued by counsel—Zera Snow and W. H. Dickson for the prosecution and J. L. Rawlins for the defense—Judge Zane charged the jury and they retired.

Mr. Dickson was so confident of the result that he improved the interim by moving that the prisoner, pending judgment, be remanded to the custody of the Marshal. Mr. Rawlins was arguing against the motion when the jury, who had been out about fifteen minutes, returned. Their verdict fully vindicated the prescience of the Prosecuting Attorney. A motion to remand the defendant to the custody of the Marshal was argued and overruled, and Saturday, November 8th, was set as the time for passing sentence.

On that day Joseph H. Evans, convicted of polygamy, was sentenced by Judge Zane to pay a fine of \$250 and to be imprisoned for

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\* The defendant, John Connelly, was subsequently convicted of unlawful cohabitation and sent to the Penitentiary.

three years and six months in the Penitentiary.\* He was denied bail pending appeal, and taken at once to prison. His case was associated with the Clawson case in the *habeas corpus* proceedings that followed, and the issue of which was trembling in the balance of justice at Washington.

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\* The day that Mr. Evans was sentenced, the case of the United States vs. Andrew Peterson, for polygamy and illegal voting (as a polygamist), was dismissed in the Third District Court on motion of Mr. Varian. Mr. Peterson, a resident of Summit County, had been indicted by the grand jury for going through a marriage ceremony with a lady friend, who was thus "sealed" to her dead husband, for whom Peterson acted as proxy. Mr. Varian made known these facts to the Court, and stated that it was "a celestial marriage" that had been performed. "A celestial marriage?" queried Judge Zane, smiling: "well, I guess that's beyond our jurisdiction; the case is dismissed."

## CHAPTER XII.

1885.

THE CRUSADE CONTINUES—CIVIL CASES MADE TO DO CRIMINAL SERVICE—THE SEVENTH DISTRICT SCHOOL TAX—THE Z. C. M. I. AND BRIGHAM CITY SCRIP CASES—THE UNITED STATES SUPREME COURT DECIDES THE CLAWSON HABEAS CORPUS CASE—BAIL DENIED PENDING APPEAL—ARREST OF ANGUS M. CANNON—THE CRUSADE IN ARIZONA AND IDAHO—MORMON COLONIZING IN MEXICO—PRESIDENT TAYLOR'S LAST PUBLIC ADDRESS—THE MORMON LEADERS GO INTO EXILE—ARREST OF ROYAL B. YOUNG, JOHN NICHOLSON AND A. MILTON MUSSER—THE HINTZE AND MCLACHLAN INCIDENTS—THE COURT OF LAST RESORT SHATTERS THE TEST-OATH OF THE UTAH COMMISSION, BUT DECLARES THE EDMUNDS LAW CONSTITUTIONAL.

HAVING succeeded in securing two convictions for polygamy, the Prosecuting Attorney and his associates seemed content to rest upon their laurels for a little season, awaiting, perhaps, a decision from the Supreme Court of the United States in the Clawson case. Before proceeding to greater extremities than those already reached, it was advisable that they should know to what extent they could rely upon the court of last resort to sustain them in their initial acts; that portion, at least, represented by the bail question.

But the crusaders in the interim were not idle. A number of arrests were made, and others attempted, for polygamy and unlawful cohabitation; and such of the accused or suspected persons as could be found were forthwith arraigned before U. S. commissioners, and almost invariably, even on the flimsiest evidence, held in bonds to await the action of the grand jury.

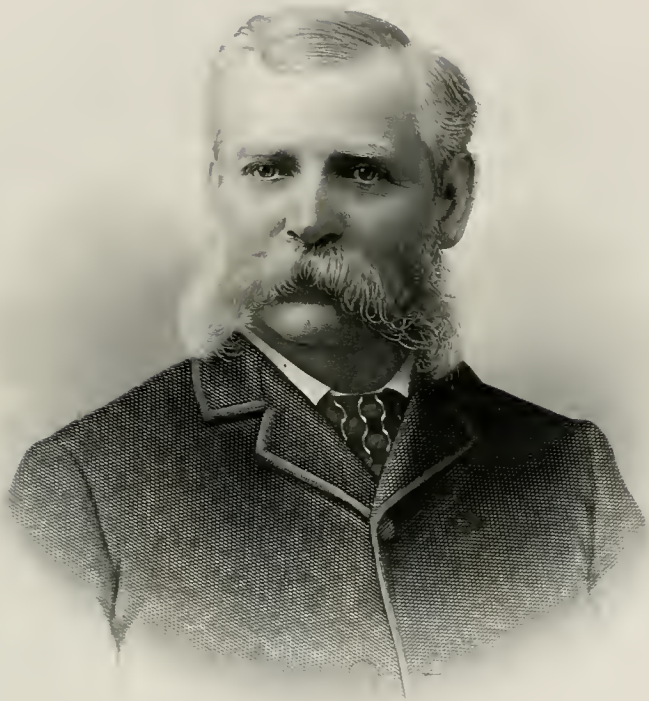
The obscurity of most of the defendants gave proof of the fact—a very painful phase of that time of trouble—that their arrest was due, not so much to diligence and acumen on the part of the Government officers—who, if left to themselves, would have flown for higher game—as to the malice and treachery of near neighbors or

former friends who, from various motives, were induced to play the role of informer. The cases in which pure patriotism and respect for the law inspired the delators, were remarkably rare. The wrongs, miseries and vexations capable of being inflicted by such characters upon those singled out as victims, are shown in a lurid light by the blood-stained annals of the French Revolution; that sanguinary reign of terror of which Utah once threatened to furnish in a small way the parallel.

One thought seemed to pervade the minds of most of our Federal officials of that period—the overthrow of Mormonism, or at all events, the suppression of polygamy, and the annihilation of the political power of the Mormons. Murder, seduction, robbery, and other crimes were to all appearances less heinous in their eyes than plural marriage and the union of Church and State that was alleged to exist in Utah. Against those twin objects of their aversion, every legal, judicial and executive battering ram was mainly directed.

Cases affording the least opportunity of dragging into court the Mormon question, were seized upon with avidity, and the most extraordinary activity would then be displayed all along the Anti-Mormon line. These alone could vie with the polygamy prosecutions in enlisting attention. Even legal actions not involving crime, —civil cases of merely local interest and significance, were bent from their purpose and used as hooks upon which to hang the whole burning issue of Gentilism *vs.* Mormonism, and hold it up to the gaze of the civilized world; the evident purpose being to keep alive the Anti-Mormon sentiment upon which the crusaders depended for encouragement and support.

Such a case was that involving the assessment and collection of a special school tax in the Seventh School district of Salt Lake City, and which came before Judge Zane for adjudication early in January, 1885. The facts are briefly these: On the 5th of September, 1884, the tax-payers of the district—or the Mormon majority of them—had met and voted for the assessment of a tax of one per cent. to raise funds—\$4,500—for the erection of a new school house; the old



*Henry Wallace*



building having been found inadequate to the demands of the increasing school population. The non-Mormons liable to the tax opposed it on the ground that the public schools of Utah were sectarian in character, and were used to disseminate Mormon doctrines. They alleged that the trustees, most of whom were Mormons, would employ none but Mormon teachers, and that such teachers sought to indoctrinate with the tenets of their faith the pupils placed under their care. For these reasons the Gentiles refused to patronize such schools, and not having the advantages afforded by the public school system, were unwilling to be taxed for its support. They declared that even the University of Deseret was a sectarian institution, and that the new school house proposed for the Seventh district would be no less so. They therefore resisted the tax for its erection, and voted solidly against the proposition at the meeting called to consider the same.

At that meeting Judge John R. McBride, not a resident of the district, but present by invitation of the objectors, took the ground that the occasion which had brought the people together was "an election" within the meaning of the Edmunds Law, and he warned polygamists not to vote lest they should violate the statute. Other speakers took the same position.

The Mormons denied the allegations as to the sectarian character of the University and the district schools, and laughed to scorn the idea that a meeting called to vote upon a school tax was an election within the meaning of the Edmunds Law. By a vote of 127 to 68 they voted the special tax, and instructed the trustees of the district, Isaac M. Waddell, Henry Wallace and B. G. Raybould—the last-named gentleman a non-Mormon—to take the necessary steps for its collection. An injunction to restrain them from so doing was applied for by L. S. Stevens and thirty-six others, and the papers preliminary to a judicial hearing having been issued and served, the case came before the District Court on the 2nd of January.

Prior to that time the question whether or not a meeting called for the purpose of levying a school tax could properly be considered

an election, had been presented to the Utah Commission, submitted by that body to the Secretary of the Interior, Hon. Henry M. Teller, and by him laid before the United States Attorney-General, Hon. B. H. Brewster. This point in the controversy was disposed of on the 5th of January, when the Attorney-General delivered an opinion to the effect that the Utah Commission had no jurisdiction of the matter: that a meeting called for the purpose of deciding the question of levying a school tax was not an election within the meaning of the Edmunds Law, and consequently even polygamists could vote on an occasion of that kind if they were property tax-payers and residents of the district in which the meeting was held.

The result of the proceedings before Judge Zane was equally unsatisfactory to the Anti-Mormons. For an entire week the Mormon question—"polygamy," "priestcraft," "union of Church and State," "priestly dictation in politics and in all things temporal and spiritual,"—occupied the attention of the Court and the public. Old Mormon sermons were read, the Book of Mormon and Doctrine and Covenants were cited, witnesses examined and speeches made, until the subject, the Court, the attorneys and the spectators were all equally exhausted. Finally the case was submitted and on the 8th of January Judge Zane rendered his decision. He stated that while it had been substantially proved that the authorities of the Mormon Church claimed the right to counsel and advise their followers in secular as well as spiritual matters; and that as a general rule, though not in all cases, Mormons had been employed to teach the public schools; it had not been shown that it was a general practice to give sectarian instruction in such schools. The weight of evidence was against the proposition that sectarian doctrines had been, or would be, taught in the Seventh district, and as the tax was in pursuance of a valid law, it was collectable. The prayer for a perpetual injunction was denied, the temporary restraining order dissolved, and the case dismissed.\*

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\* The enforcement of the law was always a strong point with Judge Zane. In the very heat of the crusade, while exerting every effort, bending the law for the suppression



The satisfaction felt by the Mormon public over the termination of this matter was enhanced a few days later by the news of the final settlement of a judgment previously rendered in another important case, which had been taken to Washington for adjudication. It was the celebrated "scrip case," the parties to which were the United States by its Internal Revenue Collector, Colonel O. J. Hollister, and Zion's Co-operative Mercantile Institution.

The litigation arose in 1879, over the taxation in 1876-78 of the scrip issued by Z. C. M. I. to its employes; a certain amount of which paper found its way into general circulation, not as money, but as due bills payable in merchandise at the counters of the various stores owned and conducted by the institution. Colonel Hollister contended that these bills were a regular circulating medium, and taxed them as such. To his peremptory demand for the amount of the tax—\$16,810.92—the directors of Z. C. M. I. had no alternative but to pay it; protesting as they did so against the exaction, which they deemed illegal. Proceedings for the recovery of the money paid were instituted in the local courts, and after passing through these tribunals the case went up to the Supreme Court of the United States. The issue in every instance was a ruling to the effect that the tax levied by the Collector was illegal. The court of last resort rendered its decision in the summer of 1884, and some months later the tax money was refunded, with costs and interest. The last warrant from the Treasury Department, in settlement of the judgment, was received by Z. C. M. I. on the 12th of January, 1885.\*

of polygamy, the Judge invariably sustained the city and county officials (Mormons) in their effort to restrain the liquor traffic and abolish gambling and other evils. Other judges had been less considerate.

\* Superintendent Thomas G. Webber, of Z. C. M. I., kindly furnishes the following data relative to this case: "I find upon looking up our papers that O. J. Hollister assessed against us an internal revenue tax for our retail merchandise orders, beginning September 30, 1876, up to and inclusive of September 30, 1878. The total that we paid to him was \$16,810.92. This includes an item of \$4,852.42 which he assessed against our branch house at Logan. Between February 25th and March 5th, 1879, testimony

Collector Hollister also assessed the co-operative institutions of Brigham City, on account of scrip issued by them, and succeeded in crippling several important industries founded and fostered at that place by Apostle Lorenzo Snow. These institutions also planted suits against the Collector, and in due time recovered the money exacted from them.

The same month that saw the final settlement of the Z. C. M. I. "scrip case," witnessed the delivery by the Supreme Court at Washington of its decision in the Clawson *habeas corpus* case. This decision, the date of which was January 19, 1885, unlike the two just mentioned, was adverse to Mormon interests. The granting of bail to the defendant, pending his appeal to the higher courts, was adjudged to be a matter purely discretionary with the tribunal that tried him. This virtually affirmed the action of Judge Zane in denying bail to Rudger Clawson and Joseph H. Evans, who were now in prison, where they must remain, awaiting further developments in their cases. The opinion was that of a majority of the court, two of the justices—Miller and Field—dissenting.

The anti-polygamy crusade was now vigorously resumed. As stated, the crusaders, while the bail question was pending at Washington, were not idle. Preparations were in progress for a tremendous onslaught upon the Mormon Church, the leaders of which were to be the chief objects of attack, with a view to intimidating the community and expediting the work of putting down polygamy and its alleged kindred evils.

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was taken here to get at facts, together with our objections to the tax; and on September 30, 1879, we appealed to the Commissioner of Internal Revenue to refund the amount collected, as we believed it illegal. On May 14, 1881, we obtained judgment in our favor in the Third District Court of Utah; on December 19, 1881, Hollister appealed to the Supreme Court of the Territory; and subsequently to the Supreme Court of the United States. On June 4, 1884, a remittitur was filed in pursuance of a mandate of the Supreme Court of the United States; and on July 21, 1884, final judgment was entered against Hollister for the amount we had paid, costs and interest. This judgment was finally settled by the Treasury Department through the Collector of Internal Revenue for the district of Montana, to which district Utah belonged."



*A. W. Bessey*



Hitherto the cases tried under the Edmunds Law had been those of persons comparatively humble and obscure, whose domestic relations had been disclosed by informers equally unknown to fame. Now it was resolved to assail the head and front of the Mormon system, and bring such a pressure to bear upon its chiefs that they would succumb to the inevitable and advise their followers to do likewise. This result, it was believed, would be far more likely to ensue speedily from the adoption of such a course, than if the ordinary procedure were followed and only known offenders against the law prosecuted as fast as their offenses came to light.

It was assumed—and the assumption was generally correct—that most of the leading Mormons were polygamists; and that even those who did not practice plural marriage, were believers in and advocates of the principle. In the eyes of the crusaders, this belief and advocacy were almost equivalent to the practice. It was against such men, therefore—who were regarded as the pillars of the Church—that the Federal courts and their agents prepared to move. Whether innocent or guilty, Presidents, Apostles, Bishops, and other Elders of influence, must be made to feel, to some extent, the thumb-screw and the rack, for the purpose of extorting from the head of the Church a declaration of the Church's surrender. "Come within the law, and advise your people to do likewise," was the requirement made of the Mormon leaders at that time.

It was the boast of the crusaders that no innocent person was convicted; and perhaps this much is true; but it is also true that innocent men were proceeded against, and the whole community terrorized; so that the innocent—especially those whose relatives and friends were prosecuted—suffered with the guilty.

It was not always deemed necessary, as a preliminary to arrest and arraignment, that formal complaints should be made, aside from those furnished by regularly employed official accusers, who in most instances knew as little about the cases in which they were paid to figure, as Earth's inhabitants know of the domestic relations of the inhabitants of Jupiter or Mars. Street gossip was a sufficient cause

for the issuance of subpoenas and writs of arrest, and Dame Rumor was the delator of the hour.

As a matter of course the Mormon people did not look with much favor upon these proceedings, nor betray any feverish solicitude for their success. It was their religion that was assailed, whatever their opponents might think or say, and the flippant invitation to "come within the law" meant more to them than their enemies conceived. They might be deemed stubborn and defiant, be stigmatized as obstructionists and traitors, but they purposed defending themselves and what they considered their sacred rights, in every legitimate way. They would maintain at all hazards the rightfulness of a principle, which, if only a few of them practiced, all had been taught to revere.

Nor did the crusaders look to the Mormons for countenance and sympathy. They might pretend otherwise, and affect to be shocked at the measures adopted by the oppressed people for their defense;\* but it was only the unreasonable and rabid that really took this view. Most of them were perfectly aware that they were dealing with a sincere and conscientious community. They knew that no honest body of religious worshippers could afford to do otherwise than as the Latter-day Saints did under these circumstances.

It is not known that the Gentiles of Utah—aside from the support they gave to the Anti-Mormon press, the non-Mormon churches and the Liberal party organization—contributed means to carry on the crusade. It is a fact, however, that special funds were provided from some source—presumably from Washington—to pay the expenses of the "holy war" against Mormonism.

With this money an army of deputy marshals was employed,

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\* Fault was found with the Mormons for instituting a "defense fund," to which the members of their Church were called upon to contribute. This fund was to pay the attorneys' fees and in some instances the fines of poor persons who were prosecuted and put to heavier expense than they were able to bear. They were regarded as martyrs for a principle and assisted accordingly. The Anti-Mormon view was that they had no more right to assist each other in this way than horse-thieves and robbers had the right to band together to defeat the ends of justice.

and a hateful system of espionage was inaugurated. Paid informers, both men and women, were put to work to ferret out cases of polygamy. Some of these assumed the roles of peddlers, some of tourists, others of tramps, and insinuated themselves into private dwellings, relying upon their impertinent inquiries and the gossiping propensities of the inmates of the homes desecrated by their presence, to elicit desired information. In some places they were eminently successful; in others, they were promptly detected and expelled. Little children, going to or returning from school, would be stopped upon the streets by strange men and women and interrogated respecting the marital relations of their parents. At night dark forms could be seen prowling about the premises of peaceable citizens, peering into windows or watching for the opening of doors through which to obtain glimpses of persons supposed to be inside. Some of the hirelings were bold enough, or indecent enough, to thrust themselves into sick-rooms and women's bed-chambers, rousing the occupants from slumber by pulling the bedclothes off them. Houses were broken into by deputy marshals armed with axes. Delicate women, about to become mothers, or having infants in arms, would be roused from rest at the most unseemly hours, driven long distances through the night, in vehicles filled with profane and half-drunken men, and arraigned before U. S. commissioners. More than one poor woman, fleeing from arrest, or succumbing from fright and exhaustion, perished in giving premature birth to a child destined to bear through life the effects of the brutal treatment meted out to its unfortunate mother. Male fugitives were shot at if they did not immediately surrender to the officers, and in one instance a reputable citizen was slain without provocation by an over-zealous deputy marshal, bent upon vindicating "the majesty of the law."

"Hunting cohabits"—to use the vulgar parlance of the times—was the most lucrative employment of the hour; and one in which some of the most disreputable persons in the community zealously engaged. Twenty dollars per capita, for each polygamist arrested, was the ordinary price paid to these mercenaries for betraying

them. It was profit, not patriotism, that inspired such labors. Hence the odium attaching to such characters and the detestation with which they were generally regarded.

So bold and insulting became the night prowlers, encouraged by immunity from punishment to proceed to the most exasperating lengths—that the persecuted people in places—notably Salt Lake City—were compelled to organize special police forces to guard their homes and families against such aggressions. But there was still another object in the organization of these police. Paradoxical as it may seem, it was the protection of the spies themselves, some of whom were United States officers; and to kill or maim one—whatever the provocation—would have been heralded abroad as a Mormon atrocity, to justify all that had been done, and twice as much to follow. That so few collisions occurred, and that absolutely no blood was shed by Mormon hands during that troublous period, is an historical anomaly, a psychological marvel; one that speaks trumpet-tongued in praise of the patience and self-control of the tantalized and trampled community.

Over and above all the agencies mentioned, as sources of sorrow and suffering to the people of Utah during the time of the crusade, there was one more prolific of misery than all the others combined. Strange to say, it was due to the Mormons themselves. We refer to the gossiping propensities of many of them, by which they played, unconsciously or recklessly, into the hands of those quick to avail themselves of such folly. "There is nothing that can work such havoc as a fool." Malice and cupidity slew their thousands, but gossip her tens of thousands, during that time of trouble. It was the gossips among the Mormons who furnished most of the fuel to feed the fierce fires that at one time wrapped all Utah as in a mantle of smoke and flame.

The initial move made in the direction of prosecuting prominent Mormons, known or suspected to be polygamists, was the arrest at Salt Lake City on the 20th of January, 1885, of Elder Angus M. Cannon, President of the Salt Lake Stake of Zion. Simultaneously



an effort was made to apprehend Elder Charles W. Penrose, also one of the Presidency of the Stake, and editor-in-chief of the *Deseret News*. He was not found by the officers, however, though they ransacked the *News* buildings from garret to basement in quest of the man whose keen and caustic pen had long been a rankling thorn in the side of Anti-Mormonism. Many other Elders were soon afterwards taken into custody.

Elder Cannon was arrested on the street by Deputy Marshal Greenman. The same afternoon he went before U. S. Commissioner McKay—who did most of the work falling to the lot of examining magistrates at that time—and gave bonds for his appearance on the day following. His bonds were fixed at \$2,500, which security was furnished in his behalf by Messrs. Elias Morris and John R. Winder.

While the defendant was still in custody, another deputy marshal rushed down the street to the Cannon residence in the Fourteenth Ward, with a pocketful of subpoenas to serve upon members of the family. Reaching the house, he rang the bell, and on the servant girl's opening the door, demanded to see Mrs. Sarah M. Cannon. He was informed that she was not within, whereupon he asked to see Mrs. Amanda M. Cannon, but was told that she was sick and could not receive callers. Still he insisted upon seeing her. Finally the girl said she would step up stairs and "inquire about it." She did so, but had no sooner entered the sick lady's room than the deputy marshal, who had ascended the stairs uninvited, abruptly intruded himself through the doorway and into the sick lady's presence. Mrs. Cannon, pale, weak, and propped up with pillows, was temporarily occupying an easy chair, while her bed was being made. She was very ill, and had been confined to her room for days. The rude conduct of the officer, with his blunt announcement that her husband had been arrested, was a severe shock to her sensitive nerves, but scarcely more so than the offensive familiarity with which the deputy deported himself. Sitting on the side of the bed and leaning over the arm of her chair, until the fumes of his breath,

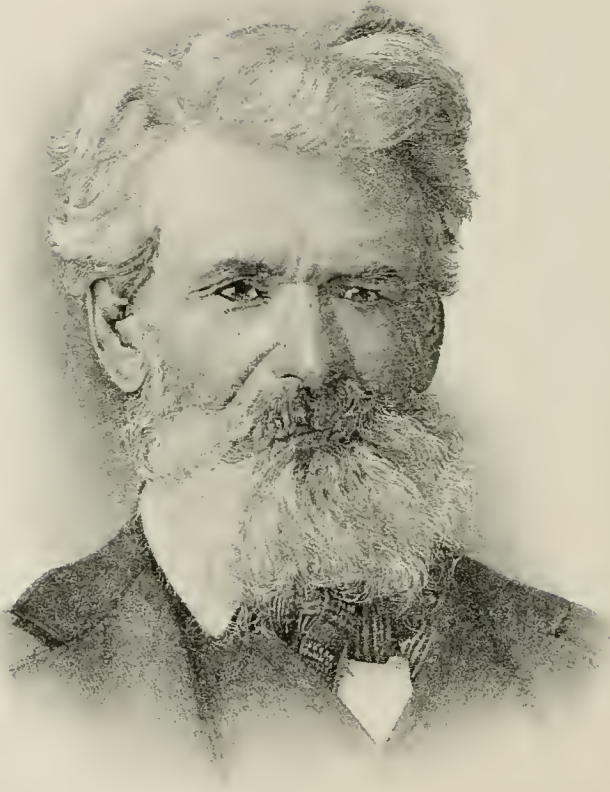
laden with whiskey and tobacco, nauseated her, he read the contents of the paper summoning her to appear as a witness against her husband. Finally becoming convinced that Mrs. Cannon was really in a feeble state of health, and that no ruse was being attempted, he assumed an apologetic air and told the lady that he would see Commissioner McKay and if possible have her excused from appearing at the examination. He was then shown down stairs and out at the front door, but immediately appeared at the back door, where he encountered Mrs. Angus M. Cannon Jr., whom he also subpœnaed, and, on the strength of an alleged school-day acquaintance, asked her to inform him of the whereabouts of other witnesses who were wanted. His request being denied, he resorted to threats and finally to his former trespassing tactics. Following the lady into the house, he subpœnaed Mrs. Clara C. Cannon, and then departed for the County Court House, where he served papers upon the recorder, George M. Cannon, Esq., and other sons of the defendant who were found there.

So ended this deputy's exploit. Would that we could say it was the worst one performed by characters of his class. Some of the officers were gentlemen, as all ought to have been; sufficiently chivalrous, at any rate, to prevent them from insulting sick and helpless women. Others were simply ruffians, human wolves turned loose to work their will upon a devoted flock, powerless to protect themselves.

The complaint against Elder Cannon, which was signed by S. H. Gitson, one of the persons regularly employed in the capacity of "accuser of the brethren," charged him with polygamy and unlawful cohabitation. The gist of it was as follows:

That Angus M. Cannon, prior to January 1st, 1884, at Salt Lake City did marry and take to wife one Amanda Mousley, and ever since that date the said Amanda Mousley has been and still is the lawful wife of the said Angus M. Cannon. That afterwards, to wit: on the 1st day of June, 1884, and while the said Amanda was still living and undivorced from him, he, the said Angus M. Cannon, at the County of Salt Lake, Territory of Utah, married and took to wife one Mattie Hughes, and thereby then and there did commit the crime of polygamy; and the said complainant further on oath complains that for more than ten years last past the said Angus M. Cannon has, at the City of Salt





*David Fairbanks*



*Susan Fairbanks*



Lake, continuously lived and cohabited with more than one woman, namely, with the said Amanda Mousley Cannon, and with one Sarah Mousley, and with one Clarissa C. Valentine Mason, and with the said Mattie Hughes.

The examination before Commissioner McKay began in the afternoon of January 21st and ended in the afternoon of the 24th. Ten witnesses were examined, and as many more were called, but were absent. The testimony showed that the defendant recognized three women as his wives, namely: Sarah M. Cannon, Amanda M. Cannon and Clara C. Cannon, and had married them before the enactment of the Edmunds Law; that Amanda and Clara lived in the same house, occupying different suites of rooms, while Sarah dwelt in a separate house in the rear of the other residence; that the defendant took his meals alternately with these wives, but had not, since the Edmunds Law was enacted, slept in the rooms occupied by either, except that during the illness of his wife Amanda he had stayed in her apartment; that he usually slept by himself in a room set apart for that purpose in the house jointly occupied by Amanda and Clara. The defendant's youngest child, which was Clara's, was over three years of age. It was not proved that within that time he had introduced or addressed either Sarah or Clara as "wife." So much for the charge of unlawful cohabitation.

As to polygamy, the evidence did not sustain the charge, and it was dismissed. Dr. Mattie Hughes, whom the defendant was accused of marrying in June, 1884, was not found by the officers, and the testimony merely indicated that the defendant had visited several times the Deseret Hospital, of which Miss Hughes was an officer, that he had loaned her a horse with which to drive out in a buggy, and that he had been seen conversing with her on the steps of Zion's Co-operative Mercantile Institution. James W. Harris, the hospital steward, whose expressed surmise that "it looked like a case of polygamy" seems to have been the chief corner stone upon which the complaint was based, denied on the witness stand all knowledge of such a marriage. He stated that he had been offered money for the information he was supposed to possess, but that he had none

either to give or sell. Finally, after several days had passed, and Miss Hughes still remained in *terra incognita*,—the officers unable, and the defendant, if able, unwilling, to produce her,\*—the examination closed. On motion of the U. S. Attorney the charge of polygamy was dismissed and the defendant held for unlawful cohabitation, his bond being reduced to \$1,500.

The Commissioner, in deciding to hold Elder Cannon to await the action of the grand jury, made a remark which sounded the keynote of subsequent procedure in his case. He stated, much to the surprise of the public, that it was not necessary that sexual intercourse should be shown to have taken place between the defendant and his plural wives; since, as he recognized three women as his wives, and lived in the same house with them, it was presumable that he had cohabited with them. Hence a case of probable guilt in the premises.

The courts subsequently took a still more remarkable view, holding that sexual intercourse was not an essential element of cohabitation, but that living in the same house with two or more women, acknowledged to be wives, was sufficient in the case of a man so living to constitute unlawful cohabitation, even if non-sexual intercourse was established. They even went farther, as occasion arose, and it became desirable to convict certain persons, and decided that "the habit and repute of marriage" was alone sufficient to constitute the offense in question. Men who had ceased to cohabit with their plural wives in every sense of the word "cohabit"—except that of living in the same country or city with them—found that this would not avail them. They learned that they were liable to prosecution if they even recognized, introduced, or in any way "held out to the world" these women as their wives; and if they would be safe from arrest, indictment, trial, conviction and imprisonment—for these consecutive steps followed almost inevitably the original

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\* During the examination the Commissioner facetiously asked the defendant to take a subpoena and go in search of the missing witness.



accusation—they must absolutely put away their plural wives, give them separate homes, and no longer pay them any attention beyond providing for their support and accosting them as mere friends at chance meetings on the street or in other public places.

Moreover, it was required that men should come into court, make public renunciation of their polygamous relations and bind themselves by a promise not to resume them at any time in the future. Nearly all refused to make such promises,—to agree to cast off their wives and children, sealed to them, as they believed, by eternal covenants in holy places; deeming it dishonorable and even criminal to do so. These were punished virtually for refusing to promise—since the penalties imposed upon them for breaking the law, were invariably made heavier on account of their unbending attitude.

Even to provide each wife with a home of her own, apart from the other wives, was more than most polygamists could do. As a rule, they were not rich in this world's goods, and not a few of them were quite poor. Many in comfortable circumstances had such large families that to support them they were obliged to economize means and space; and accordingly covered with one roof two or more of their domestic flocks, giving to each branch of the household a separate suite of apartments in the same domicile. This was the case with Elder Angus M. Cannon, who now found himself under bonds, facing indictment, trial and conviction for unlawful cohabitation; though he had endeavored so to arrange his affairs as to fulfill every requirement of the law. But even had he been able to give each wife, with her children, a separate home; had he made a hermit of himself and remained utterly apart from his family and fellow men, it would not have protected him from the operations of the crusade. So long as he was reputed to have more than one living and undivorced wife, he was in danger, regardless of how he conducted himself.

As shown, there was a certain object that the crusaders hoped to attain. It was not any individual Mormon that the Government and its representatives wished to push to the wall and persecute.

Some men were not above wreaking vengeance upon personal enemies and using the lash of the law for that purpose; but such petty characters were not, let us hope, very numerous. What Judge Zane, U. S. Attorney Dickson and men of their class required was the surrender of the Mormon Church to the Federal Government. To effect this, they were prepared to make matters as disagreeable as possible for the Mormons, particularly their men of influence. The polygamy of John Doe, or the immorality of Richard Roe, cut but a small figure in the controversy. It was the polygamous system of the Mormon Church and the political power of the Mormon people, that were the main objects of attack. To destroy these the Edmunds Law had been enacted, and was now being enforced. These facts, borne in mind, will explain many things yet to be narrated, and show the real reason for their occurrence.

President John Taylor and other leading Elders had taken steps, immediately after the enactment of the Edmunds Law, to place themselves upon the safe side of the line, as they supposed; both with a view to honoring the statute, however unjust and oppressive they deemed it, and protecting themselves against just such snares as that which subsequently took the feet of the presiding officer of the Salt Lake Stake of Zion. While not putting away their wives, disowning them and their children, or failing in any way to provide for their support and the education of their offspring, they had given them separate homes—in none of which the husbands and fathers dwelt—and had ceased to cohabit with them in every sense. President Taylor occupied his official residence—the Gardo House—which his wives vacated for other residences, and the housekeeping department of which was placed under the supervision of his sister, Mrs. Agnes Schwartz. How little such precautions availed the aged leader and his associates who followed his example, is a matter of familiar history.

The reader may mentally inquire why the President of the Mormon Church was not the first of its prominent Elders to be prosecuted,—why, since the plan was to intimidate the Church, he,

its foremost representative, was at first passed by, with others more conspicuous than the Elder now under bonds. The answer is found partly in the fact that what President Taylor had done and what Elder Cannon had left undone, in the matter of placing themselves *en rapport* with the strictest interpretation of the Edmunds Law, was well known to the crusaders, who like wise generals, assailed at the outset the more vulnerable points of the defended position before attacking those which ordinarily would have proved impregnable. Moreover, the crusade, like all such movements, grew by degrees, fattening by what it fed upon, and did not reach at a single bound the acme of sternness and severity.

Another reason is, that at the time Elder Cannon was arrested President Taylor and other leading Mormons were absent from home, having left Utah some weeks before on a tour through the settlements of the Latter-day Saints in Arizona. There, as in Idaho, they were beginning to feel the rigors of the crusade, which had broken out simultaneously in all three Territories. It was to comfort and counsel his people in the southern settlements, where considerable agitation and distress prevailed, that President Taylor undertook this journey. He was accompanied by President Joseph F. Smith, Apostles Erastus Snow, Brigham Young, Moses Thatcher and Francis M. Lyman, Bishop John Sharp, Elder C. W. Penrose and others. Apostle Snow joined the party after it left Salt Lake; Elders Young and Penrose left it at Cheyenne and went eastward.

The day of departure from Salt Lake City was the 3rd of January. Proceeding over the Union Pacific Railroad to Denver, thence to Albuquerque in New Mexico, and thence to St. David, Arizona, President Taylor and his party met at the last-named place Elders Jesse N. Smith, Christopher Layton, Alexander F. Macdonald and Lot Smith, presidents, respectively, of the four Stakes of Zion in that region; and learned from them full particulars of the hardships and trials endured by their hapless co-religionists.

A sample act of malice and injustice on the part of the Arizona crusaders was the sentencing of three Mormon Elders—convicted

without evidence and almost without form of law—to the Detroit House of Correction, over two thousand miles from the scene of their alleged offenses; and this while there was a good and available prison at Yuma, within the Territory. Each of the victims indicted for polygamy was fined five hundred dollars and sentenced to three years and six months in prison at hard labor. The names of the Elders were A. M. Tenney, P. J. Christofferson and C. I. Kempe. Judgment was pronounced upon them at Prescott, early in December, 1884, by Judge Sumner Howard, formerly United States District Attorney for Utah. On the same day W. J. Flake and J. N. Skousen, who had pleaded guilty to the charge of unlawful cohabitation, were each fined five hundred dollars and sent to prison for six months. They were incarcerated in the Penitentiary at Yuma.

The object in sending the other Elders to Detroit, far from home and friends, was simply to render their situation more painful. The manner in which they were dealt with was graphically depicted by Hon. C. C. Bean, Delegate to Congress from Arizona, in a speech delivered by him several years later before the House Committee on Territories, which was considering an application for Utah's admission into the Union. Said he: "They dragged down three Mormon Bishops from the adjoining county and brought them over the mountains nearly one hundred and fifty miles, and had seventy-five or one hundred witnesses against them; but they found they could not prove anything against them [as to polygamy] so they shifted the indictment to unlawful cohabitation, and after they had convicted them of that, they passed sentence upon them under the law prohibiting polygamy. They sentenced them for three years at hard labor in the State prison, and they were sent to Detroit."\*

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\*These Elders, after serving out the greater portion of their time, were pardoned by President Cleveland and restored to liberty. Said Mr. Bean, in the speech referred to, delivered January 12, 1889: "I brought the matter up before the Attorney-General of the United States, and he said it was the d—dest outrage he had ever known. \* \* \* I then went to the President of the United States and told him I wanted these men taken out of prison. He said: 'What did Garland say?' I said, 'Shall I tell you exactly what he says in regard to this?' He said, 'Yes,' and I repeated it. The papers were

It was these acts and others like them, with the terrorism resulting, that caused President Taylor to visit Arizona. The situation of his people in that Territory was such that he felt impelled to advise those liable to prosecution under the Edmunds Law, to evade it so long as it was wickedly and unjustly administered; and to keep out of the way of their prosecutors as much as possible. In order to provide a place of refuge for such as were being hunted and hounded, he sent parties into Mexico to arrange for the purchase of lands in that country upon which the fugitive Saints might settle. One of the first sites selected for this purpose was just over the line in the State of Sonora. Elder Christopher Layton made choice of this locality. Other lands were secured in the State of Chihuahua. President Taylor and his party called upon Governor Torres at Hermosillo, the capital of Sonora, and were received by that official with marked courtesy. Returning to Benson, in Arizona, where the final decision to purchase lands in Mexico was made, the Mormon leader, after visiting Maricopa County, crossed the country to the Pacific Coast. At San Francisco he received dispatches to the effect that it would not be safe for him to return to Utah, as his arrest had been determined on. He nevertheless set out for Salt Lake City, where he arrived on the 27th of January, a week after the arrest of Elder Angus M. Cannon.

At the Tabernacle on the following Sabbath—February 1, 1885—President Taylor made his last appearance in public and preached his farewell discourse. He detailed the principal incidents of his visit to the Saints in the south, recounted the wrongs that they had suffered, and the evils with which they were threatened, and repeated the advice that he had given them; applying it to the Saints in Utah. He counseled them to be patient, to restrain themselves, and commit no violence, but to evade the law, which he felt was not only unjust and unconstitutional, but, in the hands of the officials sent to enforce

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taken over there, and I waited a month until he signed them, and I took these Mormon Bishops out of prison, to which they were unlawfully condemned. \* \* \*  
It was last year.’

it, was being wrested from its letter and purpose and made more oppressive than its makers designed.

The President took his own counsel and retired from public view; an example speedily followed by his Counselors, the Apostles, and other leading men of the Church; with others less prominent but still liable to prosecution. From time to time the First Presidency communicated with their people by means of epistles read to them at their general conferences; but with the exception of a few intimate friends, including members of his family, who accompanied him in his secret journeyings from place to place, sharing his retirement and acting as guards or messengers for him and his fellow exiles, the Latter-day Saints never again saw President Taylor alive. The most persistent efforts were put forth for his capture, but all to no purpose. The friends whom he trusted were true, and coaxings, promises and threats were alike ineffectual in leading to his discovery. There was no traitor, or what is almost as bad, no thoughtless, mischievous gossip in the ranks of the faithful souls surrounding the venerable exile during the few sad years remaining to him.

As stated, the crusade began simultaneously in Utah, Arizona and Idaho. During the winter of 1884-5 the Idaho Legislature enacted the celebrated test-oath law, disfranchising every Mormon in that Territory. The reputed author of the bill from which the law was framed was H. W. Smith, *alias* "Kentucky" Smith, afterwards an Associate Justice of Utah. Having passed both branches of the Assembly, it was approved by the Governor, William M. Bunn. The effect of this measure was to disfranchise from fifteen hundred to two thousand citizens, most of whom had broken no law, but were simply members of the Church of Jesus Christ of Latter-day Saints. The enactment of this piece of legislation—which, to the astonishment of the Mormons, and many Gentiles as well, was declared constitutional, not only by the Idaho courts but eventually by the Supreme Court of the United States—was followed by the arrest, conviction and imprisonment of many persons.



*Thomas Denton*





One of the most active agents of the crusade was the United States Marshal, Fred T. Dubois, who subsequently represented Idaho in Congress, first as Delegate, and after the Territory became a State, as Senator. He it was who, while U. S. Marshal of the Territory, said, after selecting a jury to try a certain Mormon case, that he had a jury that would convict Jesus Christ if He were on trial for unlawful cohabitation before them.

Arizona imitated Idaho's example in the matter of a test-oath law disfranchising Mormons, but, unlike the one enacted by Utah's neighbor on the north, it did not remain long upon the statute books. Governor Zulich advised its repeal and the Legislature followed his advice.

Close upon the heels of Elder Angus M. Cannon's arrest, came that of many others, more or less prominent in the Mormon Church. Among the first cases taken up was one in which Royal B. Young was the party defendant. He was charged with polygamy and unlawful cohabitation, and was arrested at Salt Lake City on the 28th of January. Two days were occupied by his preliminary examination before U. S. Commissioner McKay. The defendant was accused of marrying three women, namely, Mary Pratt, Emmeline Rollins, and Agnes McMurrin,—an accusation that he did not deny, but maintained that he married them prior to the enactment of the Edmunds Law; since which time he had lived with but one of them—Mary Pratt Young, the legal wife. The evidence sustained this assertion, and the charge of unlawful cohabitation was dismissed; but the defendant was held for polygamy, his bond being fixed at \$2,000. His detention on this charge was due to an incident that took place while the witness Agnes McMurrin was being examined. Said she, in answer to questions propounded by the Prosecuting Attorney:

“I am twenty-four years of age. I live on the State Road; have lived there about three months. Previous to that time I lived with my father. I am the wife of defendant. I was married to him February 8, 1881. I think Joseph F. Smith married us.”

QUESTION.—“Have you ever lived with your husband as his wife?”

ANSWER.—“No, sir.”

“Has he ever occupied the same room with you?”

“No, sir, he has not.”

“Have you and the defendant never assumed the relationship of husband and wife?”

“No, sir, we have not.”

MR. DICKSON.—“You will pardon me, but I shall be under the necessity of asking you a very plain question.”

WITNESS.—“Very well.”

COMMISSIONER MCKAY.—“You can have the court room cleared of spectators if you wish.”

WITNESS.—“Never mind; it is not necessary.”

MR. DICKSON.—“Have you ever had sexual intercourse with your husband at any time?”

WITNESS (pointedly).—“No, sir; I never have.”

“You have never had any children then?”

“No, sir.”

“Why did you marry him, then?”

“Because I wanted to. He calls on me occasionally. He never eats with me. My father, mother and a little grand-child live in the same house. My husband and I have never been out together. I have never received him into my bed-room. He sometimes goes in to wind the clock. He went into my room once to hang a picture. He has contributed to my support during the last three months. Prior to that time he did not. At the time of our marriage we agreed to live separately, as we were, until such time as the Edmunds Law was settled.”

MR. DICKSON.—“You were married in February, 1881, were you not?”

WITNESS.—“We were.”

MR. DICKSON (jubilantly).—“That’s as good a thing as I want. Do you know that that law was not passed until March, 1882?”

WITNESS.—“I don’t know when it was passed.”

COMMISSIONER MCKAY.—“Perhaps she does not know the difference between the Anti-polygamy Act and the Edmunds Law.”

WITNESS.—“I do not know the difference. I know very little about the laws; only there was a great deal of talk about anti-polygamy laws at that time.”

Mr. Dickson, however, suspected the witness of giving false testimony. She was found to have signed a registration oath in September, 1882, and to have voted in the years 1883 and 1884. These facts, with the assumption that she was married to the defendant after and not before the passage of the Edmunds Law, formed the basis of preliminary proceedings against Agnes McMurrin for perjury. The case was eventually dismissed. Now, however, she was held, with her husband, to await the action of the grand jury.

Another incident of the Young case was the fining of one of the witnesses—Miss Jessie Grant—for failing to respond promptly when summoned for the examination. It was shown that the subpoena had not been read to her by the officer sent to serve it, but Commissioner McKay held that such a reading was not necessary, and that her failure to respond to a verbal summons placed her in contempt. He imposed upon her a fine of twenty-five dollars.

Some of the witnesses, it seems, had been procured with difficulty. Miss McMurrin and her friend, Miss Grant, had refused to admit the officers into the house where the first-named lady was found, unless they showed something more authoritative than a mere subpoena; and with hatchet in hand one of the irate heroines was preparing to resist the forcible entrance of the deputies, when the defendant, accompanying other officers, appeared upon the scene and advised the ladies to submit and let the law take its course. They accordingly submitted.

The next sensation to which the public was treated was an incident in the case of the United States *vs.* William McLachlan, accused of unlawful cohabitation, which charge the grand jury at Salt Lake City was investigating. On the 4th of February that body came into court and reported a contumacious witness in the person

of Phoebe Calder, who had declined to answer what she deemed an improper question in relation to the alleged second wife of the defendant. The question was: "Do you know whether Maggie Naismith is now a pregnant woman?" Judge Zane decided that the question was proper, and required the witness to answer it, which she finally did, in the affirmative.

The effect of such catechising upon the minds of modest wives and maidens may readily be imagined. That they should be averse to appearing as witnesses in this class of cases, and seek to protect themselves with hatchets or any other weapons against those who came to drag them before courts and juries to be interrogated upon subjects of this kind, is not surprising.

Soon after this incident the case of the United States *vs.* F. F. Hintze (unlawful cohabitation) was called in the Third District Court. The defendant had been arrested in the fall of 1880, as he was on the point of starting for Europe on a mission. The original charge against him was polygamy, and upon this he was placed under bonds, Mr. Cyrus H. Gold becoming his surety. Subsequently the complaint was changed to unlawful cohabitation, but through some inadvertence no new bond was required, and the defendant was virtually, though undesignedly, given full freedom. His case was called for trial on the 20th of February, 1885, when, it being discovered that he was absent, his bond was declared forfeited. Forthwith an officer was dispatched in quest of Mr. Gold, the former bondsman, who was surprised at receiving such a summons, since he believed himself exempt from all responsibility in the matter. So it proved; for on his arrival at the court-room an examination of the record disclosed the fact that the absent missionary was not under bonds and consequently there were none to forfeit.

The grand jury continued its labors, returning a number of indictments for polygamy and unlawful cohabitation, but on the 21st of February it adjourned till the 16th of March. Rumor had it that this was a politic move on the part of the U. S. Attorney to throw the Mormons off their guard, particularly those who had left home—

“taken the underground,” according to Mr. Varian—and who might now return and give the spies that were watching their premises an opportunity to report with some certainty as to their whereabouts.

It was also hinted that the Republican office-holders who were conducting the crusade were anxious to know what position would be assumed upon the Utah question by the incoming Democratic administration, and that this was the cause of the grand jury's adjournment. These were mere conjectures, however, with little or nothing to sustain them. Arrests continued to be made, and open court proceedings were not suspended.

President Cleveland said in his inaugural address that “the conscience of the people” demanded that “polygamy in the Territories, destructive of the family and religion, and offensive to the moral sense of the civilized world, shall be repressed.” The Anti-Mormons rolled these words under their tongues as a sweet morsel, and Governor Murray, in behalf of “all law-abiding citizens,” thanked the President by telegram for his “determination to suppress polygamy.”

Another polygamy trial took place in Judge Zane's court about this time. It derived its chief interest from the fact that the defendant—Thomas Simpson—was a Gentile, over whose conviction and imprisonment the crusaders plumed themselves for fairness and impartiality. This prisoner was pardoned by President Cleveland, after serving out seven months of his two years' term of sentence, in the same prison where Rudger Clawson and other Mormon polygamists remained, unpitied by those who interested themselves to secure the liberation of the Gentile bigamist.

The grand jury of the Third Judicial District resumed its sessions pursuant to adjournment. Immediately afterwards occurred another notable arrest. It was that of John Nicholson, who, in the absence of Elder C. W. Penrose, was editing the *Deseret News*, and causing the ears of the crusaders to tingle under the vigorous journalistic cuffings administered by his iron-gloved and unsparing hand. He was arrested on the 17th of March, and taken before Commis-

sioner McKay, where he waived examination and was bound over in the sum of fifteen hundred dollars. The complaint in his case was signed by U. S. Marshal Ireland and charged him with unlawful cohabitation. His sureties were Francis Cope and John Sharp, Jr.

If the crusaders imagined that this arrest would silence the batteries of the *News*, they very soon discovered their error. Mr. Nicholson, in the continued absence of the editor-in-chief, who was energetically working for the Mormon cause in Europe, had full charge of the paper, which thundered away as vigorously as ever at the abuses of the hour.

Four days before the arrest of Mr. Nicholson the U. S. Marshal and his deputies had swooped down upon the Gardo House; and two days after that arrest they made a similar descent upon the residences of President George Q. Cannon and other prominent Mormons, who were wanted as defendants or witnesses in prosecutions pending or in prospect. Beyond the service of subpoenas upon members of the Taylor, Cannon and other families, nothing was achieved by these visits, the persons mostly desired by the officers being well out of the way.\*

The next important arrest was that of A. Milton Musser. This gentleman had been made the keeper of the records in which the Mormon Church, agreeable to the advice of its founder, Joseph Smith, preserves the names and deeds of its persecutors. His well-stored mind and caustic pen had contributed to the press various articles embodying comparative statistics of Mormon and Gentile immorality, very embarrassing if not damaging to the Anti-Mormon cause. He was arrested on the 1st of April. Waiving examination, he was released on a bond of one thousand dollars, furnished in

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\*The Gardo House, the Cannon Farm and the residence of President Joseph F. Smith were repeatedly raided. At the first-named place, on one occasion, a certain Elder—not one of the general authorities—was lying upon a bed between mattresses, while the officers were searching the room. They looked under the bed, and even pressed with their hands the bedding, which had been laid so carefully above the prostrate form of the concealed gentleman that his presence, or the presence of anyone in his position, was not suspected by the deputies.



*G. R. Jones*





his behalf by S. P. Teasdel and George M. Ottinger. Mr. Musser's arrest, like that of Mr. Nicholson, took place on the street. In each instance, and according to the usual custom in those days, the arrest was quickly followed, if not paralleled, by a descent of deputy marshals upon the family residence, in quest of witnesses. Mr. Musser's alleged offense was unlawful cohabitation; his accuser being Deputy Marshal S. H. Gilson.

Many like events followed, until the calendars of the Federal courts, in Utah and the adjoining Territories, fairly groaned beneath the weight of trial settings in which well known Mormon Elders, men of prominence, character and respectability, whose only offense was in having married more than one wife according to what they deemed a divine law, were the defendants.

It was on March 23rd of this year that the Supreme Court of the United States rendered its decision in the case of *Murphy vs. Ramsey*, the effect of which was to establish the constitutionality of the Edmunds Law, but to nullify the test oath formulated by the Utah Commission, and restore the elective franchise to a number of citizens who had been deprived of it.

This case, or, more strictly speaking, these cases—five in all—were instituted immediately after the delegate election in November, 1882. Their object was to determine the powers possessed by the Utah Commission and recover the right of suffrage of which the plaintiffs had been, as they believed, wrongfully deprived. The plaintiffs were (1) Jesse J. Murphy, (2) Mary Ann Pratt, (3) Mildred E. Randall and Alfred Randall, (4) Ellen C. Clawson and Hiram B. Clawson, and (5) James M. Barlow; the defendants, the Utah Commission, Registrar E. D. Hoge of Salt Lake County, and his deputies: (1) Arthur Pratt, (2) John S. Lindsay, (3) Harmel Pratt, (4) James T. Little, and (5) Harmel Pratt, the numbers used having reference to the cases in which the parties respectively figured. All the plaintiffs had been refused registration—each by the deputy registrar named in his or her case—and the county registrar, Judge Hoge, and the Utah Commission had sanctioned these acts of refusal.

The Federal courts had sustained them, and the cases had then been carried to Washington. They were argued in the Supreme Court of the United States at the October term of 1884; Messrs. George G. Vest, Wayne McVeagh, Franklin S. Richards and Charles W. Bennett appearing for the appellants, and Solicitor General Phillips and Attorney General Brewster for the appellees.

Mr. Justice Matthews delivered the opinion of the Court. In the cases of Mrs. Pratt and Mrs. Randall the judgment of the lower court was reversed. In the cases of the other appellants the judgments on the registration issue were affirmed.

Mrs. Pratt was a widow of Apostle Orson Pratt, who died in 1831, and Mrs. Randall the wife of Alfred Randall, a living polygamist, with whom, however, she had not lived since the enactment of the Edmunds Law, March, 1882. These ladies were therefore eligible for registration.

The reasons for a different decision in the other cases were these: Mrs. Clawson in her complaint had not denied that since March, 1882, she had lived with her husband, whose lawful wife she was, and had not denied that he was a polygamist, to cohabit with whom was a disqualification to vote; Messrs. Murphy and Barlow had stated that they had not violated the anti-polygamy laws of 1862 and 1882, but had omitted to state, when they applied for registration, that they were neither polygamists nor bigamists.

The decision nullified the test-oath formulated by the Utah Commission. It was held that that body had no lawful power to prescribe conditions of registration or voting. Its authority was limited to the appointment of registration and election officers, to the canvass of the returns made by such officers of election, and the issue of certificates of election to the persons appearing by such canvass to be elected. The registrars, and not the Commissioners, were responsible for damages resulting from a refusal to register those applying for registration.

The Edmunds Law was declared constitutional; Congress having the right to enact it for the reason that the power of the Govern-

ment of the United States over the national Territories was supreme.

One effect of the decision was to shatter the doctrine, "once a polygamist always a polygamist," which the Utah Commission had sought to establish. Henceforth men and women who had once lived in polygamy, but had ceased so to live, might register and vote; a privilege of short duration for the latter, since woman suffrage was about to be abolished in Utah. A man was still deemed a polygamist, however, and therefore disqualified to vote, who, though he may have ceased cohabiting with more than one woman, still maintained the relation of husband to a plurality of wives, and had not in some way—which the Court declined to specify—dissolved that relation; a hint which the crusaders were not slow to act upon in subsequent prosecutions. They knew that the Mormons believed their marriages—which were "for time and all eternity"—indissoluble, and were quick to see the advantage which this fact and the ruling of the Court afforded them. How they put their knowledge to use will be shown hereafter.

## CHAPTER XIII.

1885.

THE CRUSADE CONTINUED—THE MORMON PRESIDENCY, IN EXILE, ADDRESS AN EPISTLE TO THE LATTER-DAY SAINTS—A COMMITTEE APPOINTED TO PREPARE A PROTEST TO THE PRESIDENT AND PEOPLE OF THE UNITED STATES—ORSON ARNOLD'S ATTITUDE—HE PROMISES TO OBEY THE LAW—THE COURT OF LAST RESORT SUSTAINS THE OPEN VENIRE PROCEDURE IN THE CLAWSON CASE—EVENTS IN UTAH, ARIZONA AND IDAHO—THE TRIAL OF ANGUS M. CANNON—A NEW DEFINITION OF UNLAWFUL COHABITATION—THE DEFENDANT CONVICTED FOR ACKNOWLEDGING MORE THAN ONE WIFE—THE MUSSER TRIAL—ANOTHER CONVICTION ON THE "HABIT AND REPUTE OF MARRIAGE" THEORY—THE SPENCER, WATSON AND PRATT CASES—MORMON MASS MEETINGS FOR THE ADOPTION OF THE "DECLARATION OF GRIEVANCES AND PROTEST"—THE DOCUMENT PRESENTED TO PRESIDENT CLEVELAND.

THE spring of the memorable year to which most of the events narrated in the preceding chapter belong, witnessed a notable movement on the part of the Mormon community, the object of which was to acquaint the President and people of the United States with the true condition of affairs in Utah, and obtain, if possible, some relief from the terrible strain the Territory was under owing to the operations of the crusade. The movement was undertaken in the hope that the country, which had recently returned the Democracy to power and placed Grover Cleveland in the Presidential chair, would not turn a deaf ear to an appeal for succor from American citizens who felt that they were being trampled upon and robbed of their rights; that the Democratic leaders of the Nation, whose election had caused so much rejoicing in these parts, would not, if fully informed, sanction the radical course pursued by the Republican office-holders responsible for the reign of terror then prevailing.

The idea originated with the exiled chiefs of the Church, and its initial public phase took the form of a motion or resolution



L. W. Shurtley



presented at the Latter-day Saints' general annual conference which convened that year at the city of Logan. The conference was presided over by Apostle Franklin D. Richards. The only other members of the Council of the Apostles present were Francis M. Lyman, John Henry Smith, Heber J. Grant and John W. Taylor. It was probably the first occasion of the kind when every member of the First Presidency was absent. The meetings were held in the Logan Tabernacle.

In the afternoon of the second day of the conference—Sunday April 5, 1885—an epistle from the First Presidency was read to the congregation. It was the first communication to the Church from its leaders since they went into exile. Only two of the Presidency—John Taylor and George Q. Cannon—signed the epistle; their confere, President Joseph F. Smith, being at this time in a foreign land.

The epistle summarized the events of the crusade, and gave the reasons why the Mormon leaders had gone into exile. It defended plural marriage as a religious institution, approved and commanded by the Almighty in ancient and in modern times, and cited the Constitutional guarantees touching freedom of worship and the inviolability of contracts. Incidentally it mentioned the fact that the male members of the Church who practiced polygamy, constituted only about two per cent. of the entire membership of the Church, and asked why the whole community should be terrorized and injured for the alleged short-comings of these few.

After the reading of the epistle—which office was performed by Elder B. F. Cummings, Jr.,—Apostle Heber J. Grant arose and made the following motion:

In view of the statement in the epistle that we have heard read, that the proportion of the male members of our Church who are living in the practice of plural marriage is but little, if any, more than two per cent. of the entire membership of the Church, and the injustice done to the great majority of this community by the action of the Federal officials, I move that a committee be appointed by this Conference to draft a series of resolutions and a protest to the President of the United States and to the Nation, in which the wrongs the people of this Territory have suffered and are still suffering from the tyrannical

conduct of Federal officials shall be set forth specifically and in detail, and asking in respectful language for the same treatment to which other citizens of the United States are entitled, and report the same to a mass meeting which shall be hereafter called.

The motion was carried unanimously. President Richards then submitted the following nominations for members of the committee referred to by Apostle Grant: John T. Caine, William Jennings, Feramorz Little, James Sharp, Heber J. Grant, John W. Taylor, Orson F. Whitney, John Q. Cannon, Junius F. Wells, Charles O. Card, Abram Hatch, William W. Cluff, Willard G. Smith, Lewis W. Shurtliff, Oliver G. Snow, Thomas G. Webber, Franklin S. Richards, Samuel R. Thurman, Joel Grover, Rees R. Llewellyn, B. H. Roberts, and Joseph Kimball. The nominations were unanimously sustained.

Soon afterwards the committee met at Salt Lake City and appointed a sub-committee of their number to prepare the proposed resolutions and protest and report to a subsequent meeting of the committee of the whole. The document known as the "Declaration of Grievances and Protest," accepted after a few amendments by the committee, and read at mass meetings subsequently held at various points all over the Territory, was framed by B. H. Roberts, John Q. Cannon and O. F. Whitney. The committee, having completed its labors, a part of which was to authorize the calling of the mass meetings, adjourned *sine die*. The day set for the meetings to convene was Saturday, the 2nd of May.

Meantime the Federal courts continued the prosecution of polygamous cases, and the United States Marshal and his deputies busied themselves in raiding the settlements and searching houses suspected of harboring men and women wanted as victims of the crusade. Early in April Marshal Ireland and several of his aids visited Logan, as did U. S. Marshal Dubois, of Idaho, and some of his subordinates; the unusual event of a general conference at that point inspiring them with the hope that some of those whom they most desired to apprehend would be found or heard of in Cache Valley at that time. They were doomed to disappointment, and returned empty-handed, and empty-headed—so far as information of the whereabouts of the





*Yours truly*  
*O. Snow*



Mormon Presidency was concerned—to their accustomed haunts in and around the capitals of their respective Territories.

Arrests of persons less notable went on, however, and well nigh the whole inter-mountain region was overrun by the emissaries of the courts, hunting with all the assiduity of sleuth-hounds, and with as little pity as would have been shown by such animals, men accused or suspected of violating the Edmunds Law. The officers, who usually traveled in squads, would suddenly pounce upon some small settlement at midnight or in “the wee sma’ ’ours” between midnight and daybreak, rudely arousing the inhabitants from slumber, sometimes by discharging firearms at hastily decamping fugitives, and spreading general terror and dismay. Delicate women, fleeing from or frightened by the marauders, received injuries from which they never recovered, and more than one death lies at the door of these heartless disturbers of the peace of innocent and unoffending citizens. Even wise and brave men lost their judgment at times, and had their courage unstrung by this hateful system of harassment; so much more difficult to deal with, since the offenders were officers of the law, than if they had been thieves and trespassers, in which event many of them would undoubtedly have bitten the dust.

About a week after the close of the conference at Logan, an incident occurred upon which most of the Mormon people gazed with astonishment and grief; emotions which the same incident, had it happened a few years later, would have failed to inspire. It was the act—the first of its kind—of a well known and esteemed member of the Church, who had been arrested on the 30th of March charged with unlawful cohabitation; and who, on the 13th of April, went before the District Court at Salt Lake City, pleaded guilty to the charge, and promised to obey the law. Among those who interested themselves in his behalf and recommended, in view of his expressed intent to live within the law, that his punishment be made light, were Assistant U. S. Attorney Varian and U. S. Commissioner McKay. Judge Zane acquiesced in the arrangement, briefly lectured

the defendant—Orson P. Arnold—and fined him three hundred dollars; which, being paid, he was discharged and his bondsmen exonerated.

In view of the course subsequently taken by the whole Mormon Church, in the issuance by its leader, and the acceptance by its members, of "The Manifesto" suspending the practice of plural marriage, virtually making the same promise as that extorted from Mr. Arnold, it may seem strange to some that his act should have caused such intense feelings. The explanation is simple. The Latter-day Saints, in the year 1885, were contending for a principle, one which they did not design surrendering at the behest of any power beneath the sun; and every member of the Church was expected to make any sacrifice rather than yield one inch of the disputed ground, and thus break the united front then presented. When the Manifesto came, conditions had changed. That utterance of its leader was deemed by the Church equivalent to the voice of God requiring His people to submit to the law of the land; the intimation being that the sacrifices they had made were sufficient. They therefore yielded, in a body, to the Government—as the Jews in the days of Jeremiah should have yielded to Nebuchadnezzar, king of Babylon, that it might be well with them. Mr. Arnold's action was considered premature, or rather, since there was then no intention on the part of the Church to accede to the demands made of it, it was regarded as inconsistent and improper. Hence, though he was a man highly esteemed, the known possessor of a brave and honest soul, his conduct on that occasion was condemned by his co-religionists; excepting those who contemplated taking a similar course. Said the *Deseret News*: "Notwithstanding the course taken by Brother Arnold received the encomiums of the court and its officers and the approval of a portion of the spectators, his example is not one that any consistent Latter-day Saint can afford to follow."

His example was followed, however, by several of his brethren, and probably would have been by many more, but for the firm stand taken by the *News*, and the no less stalwart position of the Church

leaders, whose views that paper enunciated. Mr. Arnold afterwards redeemed himself in the eyes of his people, by going to prison for the sake of his religion.

The next surprise to the Mormon public was another adverse decision from the Supreme Court of the United States in the Clawson case; the *habeas corpus* phase of which, involving the question of bail pending appeal, had already been passed upon by that tribunal. It was the open venire question that was now determined; the main issue upon which the case had been carried the second time to Washington.

The reader will remember that the jury which found Rudger Clawson guilty of polygamy and unlawful cohabitation was selected on a writ of open venire, and that this procedure formed one of the grounds of his appeal from the judgment of the court which tried him. Another ground of appeal was Judge Zane's decision declaring legal the grand jury which returned the indictment against this defendant; a grand jury from which all Mormons had been excluded on account of their religious belief. When the case was before the Supreme Court of the Territory, on the 23rd of January, Judge Emerson had practically dissented from the view taken by his associates, Judges Zane and Twiss, by withholding an expression of opinion. What that opinion was, however, was no secret to the public; since it was known that Judge Emerson opposed writs of open venire, having refused to issue one in the First District, though confronted by a situation similar to that which caused Chief Justice Zane to take a course directly opposite. Judge Twiss had also refused to issue a writ of this kind to provide grand jurors in the Second District, but for some reason he saw eye to eye with Chief Justice Zane when the three magistrates sat together upon the Clawson case. From their decision affirming that of the District Court, the case went up on a writ of error to the Supreme Court of the United States, where it was argued on the 8th of April, by Messrs. Wayne McVeagh and Franklin S. Richards for the appellant, and Solicitor General Phillips for the Government. The Court's decision, which was unanimous.

was delivered on the 20th of the month. It held that the grand jury which indicted Elder Clawson was legally formed; that the empaneling of such a body to find indictments for polygamy was a portion of the prosecution of such cases, and the Mormon grand jurors were therefore properly excluded, in consonance with section five of the Edmunds Act. It also held that the District Court had the right, in the event of the exhaustion of the jury list provided under the Poland Law, to go outside the provisions of that statute and summon jurors on open venire.

On the 24th of April occurred the arrest of Bishop H. B. Clawson, and four days later the arrest of Elder Abraham H. Cannon; the latter a son of President George Q. Cannon, and one of the First Seven Presidents of the Seventies. Both were charged with unlawful cohabitation. Bishop Clawson waived examination and was held in bonds to await the action of the grand jury. Elder Cannon, already indicted, was required to give bonds to appear for trial when wanted.

Other polygamous cases taken early in hand were those of John Aird, Jr., Ole L. Hansen, John Olsen, Parley P. Pratt, James C. Watson, Edward Brain, Emil O. Olsen, William A. Rossiter, James Thompson, S. H. B. Smith, James C. Hamilton and Claudius V. Spencer.

John Aird, a tall, brawny Scotchman, assistant to the jailor of Salt Lake City, was arrested on the 25th of November, 1884, soon after the Clawson and Evans cases were tried. On the 30th of April he pleaded guilty to a charge of unlawful cohabitation, promised to obey the law and was fined by Judge Zane three hundred dollars. Unable to pay the fine he was committed to prison for thirty days.\*

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\* He had previously passed one night in the Penitentiary at the time of his arrest and prior to securing bail. On that occasion the other convicts, mostly hardened characters, some of whom Aird, in his capacity of assistant jailor, had turned the key upon, gathered round him as he entered the prison yard and proceeded to make themselves merry at his expense. He was given his choice as to whether he would sing a song, dance a jig, or be thrown up in a blanket. He took hold of the first horn of the triple dilemma, and sang a song, thus securing his footing among the convicts. Upon his sec-



Mr L Shepherd





Ole L. Hansen was arrested on the 4th of December, 1884, and five months later was acquitted in the Third District Court. John Olsen's arrest was on the 13th of December, 1884. Then followed the arrests of the other persons named, all of which were prior to May, 1885. These were all Salt Lake County cases.

In other parts of the Territory arrests were made for similar causes, such men as William Fotheringham, Marcus L. Shepherd and David Levi, of Beaver, Laban Morrill, of Circle Valley, and David E. Davis of St. Johns, Tooele County, being among the first taken into custody. The case against Laban Morrill was dismissed in the Second District Court on the 14th of March, 1885.

Other Mormons arraigned at the bar of Judge Boreman's court—that magistrate having succeeded Judge Twiss in January of this year—did not escape so easily. Still, there had been times when Judge Boreman's Anti-Mormon bias was more pronounced than during the period of the crusade. His course was then quite conservative.

The earliest victims of the crusade in Arizona were, as we have seen, Ammon M. Tenney, P. J. Christofferson and C. I. Kempe, unlawfully convicted of polygamy, in December, 1884, and each fined five hundred dollars and sentenced to three years and six months in the Detroit House of Correction; also W. J. Flake and J. W. Skouson, who, at the same time, for unlawful cohabitation, which they confessed, were heavily fined and sentenced to six months' imprisonment in the Arizona Penitentiary. The next convictions in that Territory were those of Charles I. Robson and Oscar M. Randolph, each of whom, for unlawful cohabitation, was sentenced April 7, 1885, to ninety days' imprisonment at Yuma. Elder Robson was one of the

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and incarceration he was subjected to severe treatment, the prisoners putting a rope around his body and across his neck and going through the ceremony of a hanging. The process inflicted considerable pain, and the facts in relation to these "hazings"—which for some time had been permitted by the guards, and highly enjoyed by the perpetrators—finally came to the ears of Marshal Ireland, who caused everything of a brutal nature in the sports of the Penitentiary's inmates to be discontinued.

presidency of the Maricopa Stake of Zion. The lightness of the punishment in these cases as compared with that in the others, was doubtless due to the fact that it was not imposed by Judge Howard, but by Judge Pinney, who held court at Phœnix. He manifested so much kindness to the prisoners that he won their friendship while pronouncing judgment upon them. Soon afterwards A. P. Spilsbury, George T. Wilson, James T. Wilson and Hyrum Phelps, charged with unlawful cohabitation, were each sentenced to three months' imprisonment at Yuma. Most of these defendants pleaded guilty to the charge, the U. S. Attorney threatening that if they did not do it, he would have them indicted for polygamy as well. Hon. Thomas Fitch, formerly of Utah, but then a resident of Arizona, was connected with the defense in these cases.

In the north the most notable arrest at the outset of the crusade was that of William D. Hendricks, President of the Oneida Stake of Zion. It occurred on Sunday, April 19, 1885. This Stake is in Idaho, but the warrant was served upon the defendant at Logan, Utah, by U. S. Marshal Dubois. Subsequently Bishop George Stuart, of Malad, President William Budge, of the Bear Lake Stake, Elder George C. Parkinson, afterwards President of the Oneida Stake, and other prominent Mormons, with many not so prominent, were made victims of the Anti-Mormon movement in Idaho. President Budge was acquitted, but Elder Parkinson was imprisoned for a year in the Penitentiary at Boise. He was not a polygamist, but was falsely accused and unjustly convicted of secreting a suspect of whom the officers were in search. The first persons imprisoned for polygamy in Idaho were Bishop Stuart, John T. Roberts of Rexburg, William J. Pratt of Wilford, Charles W. Simpson of Montpelier, and John Winn of Battle Creek. All pleaded guilty to unlawful cohabitation with their wives and were sentenced in the latter part of May.\*

\*The infection of the crusade seemed to spread from Utah and the adjacent Territories to some of the States, particularly those in which Mormon missionaries were laboring. On the 13th of April, 1885, two Utah Elders, William F. Garner, of North Ogden, and C. F. Christensen, of Kanosh, were arrested in Carter County, Tennessee, accused of preaching polygamy.

Thus we have endeavored to give a concise chronological statement of the earliest events of the crusade, showing the situation of the Mormon community in the spring of 1885, when occurred the great popular movement referred to at the opening of this chapter. Before treating that subject further, we must deal chronologically with several other events preceding the mass meetings at which was adopted the "Declaration of Grievances and Protest."

The trial of one of the most important cases that arose during that period now took place. It was the case of the United States *vs.* Angus M. Cannon, the opening phases of which have already been presented.

The grand jury, to await whose action Elder Cannon, on the 24th of January, had been put under bonds by U. S. Commissioner McKay, found an indictment against him on the 7th of February. He was charged with unlawful cohabitation.

The trial began on the 27th of April, before Chief Justice Zane. The prominence of the defendant and the importance of the action had the effect of crowding the court-room, and the liveliest interest in the proceedings was manifested by the spectators and the public generally. Elder Cannon's attorneys were Messrs. F. S. Richards, Bennett, Harkness and Kirkpatrick, Sutherland and McBride and Arthur Brown. The prosecution was conducted by U. S. Attorney Dickson and his assistant, Mr. Varian.

The defendant entered a plea of not guilty, and a jury was then empaneled. No juror who admitted a belief in polygamy was accepted, and it was even made a qualification that those who were to try the case should be "in sympathy with the prosecution." It being early in the term, a jury was obtained without exhausting the jury box and resorting to a writ of open venire. The twelve jurymen were William D. Palmer, Peter Clays, Phil Klipple, J. M. Richardson, M. F. Simmons, T. G. M. Smith, C. J. Smith, Martin Mankin, A. M. Johnson, W. M. Clark, Thomas Davis and Robert Mulhall. The juror Johnson had been a bigamist.

The clerk of the court, after the jurors had been sworn, read to

them the indictment charging the defendant with cohabiting with Amanda M. Cannon and Clara C. Mason, "against the form of the statute" of the United States "in such case made and provided, and against the peace and dignity of the same." The court then adjourned for the day.

Next morning proceedings were resumed with a motion by the defense for the quashing of the indictment. It did not contain all the elements made necessary by the statute, and did not state that the defendant was "a male person." A discussion ensued, and Judge Zane denied the motion.

U. S. Attorney Dickson then addressed the jury. He stated that the prosecution proposed to show that the defendant had married the two women named in the indictment; that he had children by them, and that all dwelt in the same house, the plan of which he described. It was not his intention to prove actual sexual intercourse, but to show that if a man lived in the same house with two women whom he admitted to be his wives, it would constitute the offense of unlawful cohabitation under the law.

This remarkable statement, with the yet more remarkable change of attitude that it implied, created considerable surprise, and some consternation. True, Commissioner McKay, in deciding to hold the defendant after his preliminary examination, had all but foreshadowed the plan of procedure now plainly outlined by Mr. Dickson. The Commissioner, however, had not gone so far as to say that sexual intercourse was not an essential element of cohabitation. He had merely held that such intercourse was presumed to have taken place between a man and woman claiming to be married and occupying the same house. According to Mr. Dickson, if the man and woman claiming to be husband and wife lived in the same house, the cohabitation was complete, though it were proved that there had been no sexual intercourse between them. It was upon this hypothesis that he purposed to prosecute, and, as a matter of course, to convict the defendant.

We have said that the enunciation of this theory implied a

change of attitude on the part of the U. S. Attorney. This is shown by the fact that in former prosecutions of this character Mr. Dickson and his assistants had gone to extreme lengths to produce positive proof of sexual intercourse, in order to secure convictions. Instance the Connelly, Young and McLachlan cases, in which the Prosecuting Attorney, while interrogating the witnesses Annie Gallifant, Agnes McMurrin and Phœbe Calder, pressed his inquiries almost to the verge of indecency, to elicit evidence of the kind that he now declared to be unnecessary, since cohabitation did not depend upon sexual intercourse. In the Young case the charge of unlawful cohabitation was dismissed because at the examination such intercourse could not be established. Now the U. S. Attorney sought to wipe out this record of precedents, or to fly in the face of his past procedure; thus virtually admitting that it was wrong, or at all events superfluous.

What was really meant by this change of attitude was a radical change in the plan of attack upon polygamy. The conviction of such men as Angus M. Cannon was deemed essential to the success of the crusade, and in order to insure his conviction it had been found necessary to close every crevice through which hope might whisper; to remove every rock upon which a defense might be successfully maintained. The Prosecuting Attorney and his confreres had set out to accomplish a certain object: they knew that the Nation at large was in sympathy with them; and since its law-makers had not hesitated to bend if not break the Constitution in enacting the Edmunds Law, and its Supreme Court had declared that statute valid and the power of Congress over the Territories supreme, those whose function it was to enforce that decree felt that they need not be punctilious in the observance of legal restrictions that trammelled them in the discharge of what they deemed their duty. Convictions must be had; legal ones if possible; but at all events convictions, that the plans of the crusaders might not miscarry. To prove either polygamy or unlawful cohabitation was not an easy task. The victims of the crusade, unlike the juries chosen to try them, were not "in sympathy with the prosecution," and the sentiment of the Mor-

mon community was against the success of the movement for the overthrow of their religion. Ordinary measures would therefore not avail. Recourse must be had to extraordinary measures. In the gospel of Anti-Mormonism it was permissible to do evil in order that good might come. Hence all those innovations, changes of policy and procedure, by judges, prosecutors and other officials, which this history has narrated or will yet have to record.

Resuming the account of proceedings at the trial of Angus M. Cannon. Mr. Dickson, having finished his opening and—as we have shown—somewhat startling statement, the examination of witnesses began. The first witness called was Mrs. Clara C. Cannon, the “Clara C. Mason” of the indictment. The substance of her testimony was as follows: She had been married to the defendant about ten years, and since her marriage had lived at No. 246 West, First South Street, Salt Lake City, in which house the defendant had also dwelt during the past three years. She had one living child, the issue of that marriage, born January 11, 1882. Two other children born of this marriage, and whose births were before that of the child mentioned, had died. The living child’s name was Alice. Besides her, the witness had a grown son and daughter, the fruit of a former marriage, and this daughter and two orphan children, left to her by a niece who was dead, dwelt with witness and occupied her rooms. The orphans had lived with her for five years. Amanda Cannon dwelt in the same house in a different suite of rooms. She had nine children, who lived with her in her part of the house. During the past three years and prior to February, 1885, the defendant had taken his meals with witness in her part of the house about a third of the time. He also took his meals with Amanda and her family one-third of the time. Sundays he took breakfast with witness, dinner at Sarah’s [another house, back of the main residence,] and supper at Amanda’s. There were four rooms on the second floor of the house where witness dwelt, used as bedrooms, and a hall, with two of these rooms on either side, the rooms opening into the hall. During the past three years Amanda had occupied as a sleeping



*John Gabbott*





apartment the room in the south-west corner, the defendant the room in the south-east corner, and witness the room in the north-east corner. The bedrooms of the defendant and witness were on the same side of the hall, and there was no intervening room. There were two beds in the room occupied by witness, and she, with her eldest and youngest daughters and the two orphans all slept there.

At this point counsel for the defendant asked the witness if this arrangement had continued until February, 1885; the object being to establish the point of non-access and non-sexual intercourse by the defendant from June, 1882, to February, 1885, the period covered by the indictment. The U. S. Attorney objected to the question as immaterial and irrelevant, since it was meant to establish a point the opposite of which the prosecution did not intend to prove, as it was unnecessary. A lengthy discussion ensued, leading up to Judge Zane's noted decision touching unlawful cohabitation.

The first speaker was Assistant U. S. Attorney Varian. He argued that it was not the intention of Congress, in enacting the Edmunds Law, to strike at sexual sins, such as fornication, and adultery, but at the plural marriage system of the Latter-day Saints. The living together of a man with more than one woman in the marriage relation was a public scandal, repugnant to the moral sense of the civilized world. It was this that the Edmunds Law sought to correct, while such sins as fornication and adultery were left to be dealt with under the local laws. Congress aimed not only at the act of marriage, but at the continuance of the marital status in polygamy. Cohabitation in the sense contemplated by Congress could not exist outside the marriage relation, but it could exist without sexual intercourse. It was not necessary to prove the fact of a marriage ceremony in such cases. If a man claimed two or more women as his wives and held them out to the world as such, he was guilty of unlawful cohabitation. It was the habit and repute of polygamous marriage that Congress had aimed at in enacting the Edmunds Law.

Judge Sutherland, for the defense, argued that the question asked of the witness was proper, whether or not the assertions of the prosecution were correct. The jury must be in possession of the whole facts in order to decide whether or not there had been any cohabitation. He could not find in Webster's Dictionary the definition to "cohabit" given by the prosecution. That authority said that cohabit meant to dwell with; to reside in the same place or country. Of course Congress did not mean that a man was guilty of unlawful cohabitation who resided in the same country as a woman who was not his lawful wife. Another definition to cohabit was to live together as husband and wife. The Edmunds Law was intended to prevent polygamous marriages and the continuance of polygamous relations, in order that no more polygamous children might be born. The law subjected to punishment only those who cohabited with their plural wives, and not those who merely visited, supported and associated with them. The statute should have a reasonable construction. If the prosecution should maintain their claim, the law would be in contravention of the Constitution, an *ex post facto* law and bill of attainder.

Judge Kirkpatrick supplemented the address of his colleague by pointing out the fact that Congress in the Edmunds Law had legitimated the polygamous children born in Utah up to a certain time, and argued that it could not have been the intention to deprive these children of the society of their natural protector. The Edmunds Law did not require a man to abandon his plural wives and their children, but simply to cease sexual cohabitation with such wives. The speaker exploded a bombshell at the feet of the Judge, by quoting words used by him in charging the jury in the Clawson case: at which time His Honor construed cohabitation as "the living together of a man with a woman as husband and wife, or under such circumstances as induces a reasonable belief of the practice of sexual intercourse." This, the speaker claimed, was the proper meaning, and it was upon such a construction of the word that the defendant Cannon, in arranging his domestic affairs had acted. The evidence

as to those arrangements ought not to be excluded: for without it the court or jury could not render a just verdict in the case.

Arthur Brown followed with more shrewd and severe logic in support of the defendant's position. He showed that the claim of the prosecution, if allowed, would make a man liable, though he had separated from his plural wives, if he still admitted them to be his wives; while another man could live with half a dozen mistresses and still be innocent of a crime against the law. If Congress meant what the prosecution claimed, why did it not say so? The relation of husband and wife was not in a husband's remaining in one end of a house and a wife in the other, exclusive of intercourse. The charge of this court to the jury in the Clawson case had been endorsed by the Supreme Court of the United States and was the law of the country. Mr. Brown then exploded his bombshell, by quoting from Judge Zane's remarks to Orson P. Arnold, when that defendant was before him. The Judge had then said: "Polygamy is treating more than one woman as a man's wives according to the forms of marriage, and unlawful cohabitation is treating more than one woman as a man's wives without going through these forms." This, of course, was meant as an offset to the argument of the prosecution, that the Edmunds Law had special and not general application.\*

U. S. Attorney Dickson closed the debate. He reiterated his former declaration and some of the arguments of his colleague, Mr. Varian. A man who was a polygamist would continue in that status if he only visited and supported a woman who was his plural wife.

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\* That Judge Zane originally believed it to have general application was the prevailing impression at the time of the Arnold incident. A moral man, an exponent of personal chastity, he believed, with the Mormons, that men as well as women should be virtuous; that the Gentiles who sought to "regenerate" the Mormons should begin by setting them proper examples. Hence, his broad interpretation of the Edmunds Law, broader than that of the Utah Commission, or of the Anti-Mormons in general. That he afterwards construed the law more narrowly, was evidently due to force of circumstances and the demands of policy, rather than to any desire on his part to shield Gentile sinners and punish offending Mormons only.

The law did not interfere, however, with the man who merely supported his plural wives and looked after the welfare of their children. The law presumed a continuance of cohabitation, even after voluntary separation, until judicial recognition of that separation. Mr. Dickson then said:

It is a matter of history that the Mormons do not cohabit together in the sense as used by the other side, without a form of marriage, and it was alone this form of marriage, and the practice under it, and not sexual sins, that Congress was legislating against. They knew that those sins were not upheld in Utah, but were condemned by the Mormons, and deplored by the Gentiles.

He closed thus :

It was the leaders of the Mormon Church who were primarily responsible for the spread of this practice. They were barred from prosecution by the statute of limitations, and yet were preaching, advocating and teaching this offensive principle, and it was these that the law was directed against. The intention was to compel these men to put away their wives, and, if they continued to maintain and preach the doctrine, they must come under the law in practice. If this law did not reach the leaders, it would be almost impossible to root out the evil. Congress evidently thought it best to remove the temptation of sexual intercourse with polygamous wives beyond the reach of these men, and to cause a breaking up of their family relationships.

The arguments, of which the foregoing is but a brief synopsis, were not concluded until the third day of the trial, Wednesday, April 29th, when Judge Zane rendered his decision. He referred to the phrase, "cohabits with more than one woman," contained in the third section of the Edmunds Act, and then said :

The counsel for the respective parties give to this word "cohabitation," in the connection in which it is used, different meanings, and have cited numerous authorities.  
 \* \* \* It appears \* \* \* to be somewhat chameleon-like in its character, and changes its colors, owing to the circumstances, or conditions and connections in which it is found. \* \* \* I am disposed to treat the language as of such doubtful signification in this section as to call upon the court to resort to construction.  
 \* \* \* It would seem that the purpose of this section itself was intended to protect the institution of marriage as it is understood in this country—the marriage of one man with one woman. If it had been aimed at adultery or fornication, the probabilities are that it would define adultery and fornication between two individuals as a crime, and would not have confined or limited it to two or more. \* \* \* It is reasonable to assume that the authors of this act supposed that it might be difficult in all cases,

as it unquestionably is, to prove a second or third marriage, and hence they have aimed this third section against marriages in appearance, and attempted to protect this monogamic marriage against even the appearance of any other kind. \* \* \* I am disposed to think, after the learned and able discussion upon both sides, that this law was intended more particularly to prohibit the marriage between two or more persons in appearance only. \* \* \* It is the example that this statute was doubtless intended more particularly to reach. \* \* \* This law does not attempt to interfere with the care and education of the children. It is not an inhuman law—it is not cruel. \* \* \* It simply requires every man who has a wife to live with her, and her alone, to treat nobody else as a wife. It has forbidden the form of marriage with more than one wife: forbidden a man to hold two or more women out to the world as his wives. \* \* \* I am of the opinion that it is not essential to constitute an offense against this law to show sexual intercourse. It is sufficient to show that a man lives with more than one woman, cohabits with them and holds them out to the world as his wives. That being so, that he did not have sexual intercourse with them, or occupy the same bed with them, or occupy the same bed with either of them, is no defense, and is immaterial, so far as the jury is concerned. It might be of importance in fixing the punishment: it might be a fact for the court to take into consideration.

The objection to the question for the purpose for which it is offered, is sustained.\*

After the Judge had ceased speaking, the examination of the witness, Clara C. Cannon, was resumed and completed.

George M. Cannon, son of Sarah Cannon, and Angus M. Cannon, Jr., son of Amanda Cannon, were then sworn and interrogated. They had heard their father say that he had married their mothers at the same time, prior to the enactment of any law against polygamy.

The defendant offered to show that Amanda was married to him before Clara, and that prior to the enactment of the Edmunds Law he lived and cohabited with both; that after the Edmunds Law had passed through Congress, but before it had been approved by the President, he had announced to his wives, Amanda, Clara and their families, that he did not intend to violate that law, but should live within it so long as it should remain a law, and at the same time

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\* Thus did Judge Zane, following the example of U. S. Attorney Dickson, change his attitude with reference to the scope and meaning of the Edmunds Law. Henceforth it was held to apply only to polygamists, to men who had married and still acknowledged a plurality of wives. This view was sustained, as we shall see, by the Supreme Court of the United States.

assigned his reasons for so doing; that thereafter and during the times alleged in the indictment, he did not occupy the rooms or bed of, or have any sexual intercourse with, his wife Clara, and to this extent, by mutual agreement, separated from her, though taking his meals with her and her family a portion of the time, and dwelling in the same house; he being financially unable to provide for her and her family a separate home.

To this offer the prosecution objected and the Court sustained the objection. No more testimony was introduced, both sides resting, and submitting the case without argument.

The gist of the Judge's charge to the jury was as follows:

If you believe from the evidence, gentlemen of the jury, beyond a reasonable doubt, that the defendant lived in the same house with Amanda Cannon and Clara C. Cannon, the women named in the indictment, and ate at their respective tables one third of his time or thereabouts, and that he held them out to the world by his language or his conduct, or by both, as his wives, you should find him guilty.

It is not necessary that the evidence should show that the defendant and these women, or either of them, occupied the same bed or slept in the same room: neither is it necessary that the evidence should show that within the time mentioned he had sexual intercourse with either of them.

I will state that the law presumes the defendant innocent until proven guilty beyond a reasonable doubt: that you are the judges of the credibility of the witnesses, the weight of the evidence and the facts, etc.

The defense asked the Judge to charge the jury with more particularity. They desired him to add to what he had said in relation to the presumed innocence of the defendant until proven guilty, instructions to this effect: That it was to be presumed that when the Edmunds Law took effect, all persons who had been cohabiting contrary to its provisions ceased to do so, and that no fact in the conduct of this defendant subsequent to the enactment of that law, should be made more significant of guilt because of the existence of his polygamous relations with the women named in the indictment. The request for these additional instructions was refused.

Twenty minutes later the jury rendered a verdict of "Guilty." Saturday, May 9th, was the time set for passing sentence.

The day following that upon which the Cannon trial came to a close, witnessed the beginning of proceedings in another important case; that of the United States *vs.* A. Milton Musser, also indicted for unlawful cohabitation, to which charge he pleaded not guilty.

During the empaneling of the jury, Arthur Brown, of counsel for the defense, determined to do a little probing into the past lives of those who were to legally decide the guilt or innocence of the defendant: with a view to ascertaining whether or not they were of that immaculate stamp one would suppose men ought to be who were chosen to sit in judgment upon a neighbor accused of immoral practices. The result was both interesting and amusing. The searching inquiries projected by the shrewd and pitiless attorney had upon some of the jurors an effect similar to that which might be expected to follow the pyrotechnical discharge, from a "Roman candle," of red, yellow and blue fire-balls, into the midst of a thickly populated hen-roost.

MR. BROWN [to one of the jurors, a non-Mormon, who had just said that he did not believe in polygamy].—"Have you ever unlawfully cohabited with more than one woman?"

JUROR.—"That is too personal."

"How is that?"

"That is not a proper question."

"You decline to answer?"

"I decline to answer."

"On the question of personal privilege?"

"Yes, sir."

Mr. Brown then questioned the juror as to his belief in the Bible, and if in his opinion that book taught polygamy. The answer was not intelligible, whereupon the attorney remarked: "I do not get you."

"No," answered the juror, "I don't want you to get me."

The juror was challenged by the defense for refusing to answer the question as to whether or not he had lived in unlawful cohabitation.

Mr. Varian, the assistant prosecutor, now came to the rescue, eliciting a statement from the juror that he had not lived in the *practice* of unlawful cohabitation; meaning the practice of plural marriage.

MR. BROWN [mercilessly].—"Do you mean to say you have never cohabited with more than one woman?"

JUROR.—"That is not the question."

Here the Court explained that the question was as to "living in unlawful cohabitation. "The pill being sugar-coated, the juror was able to swallow it. "No, sir," said he, "I have never *lived* in it."

The prosecution denied the challenge and objected to the examination as unfair. It was improper, this searching into and sifting of a man's past life. The term "cohabit" should have the definition given it by the Court.

Mr. Brown stated that these questions were the same in effect as some of those asked by the prosecution during the Cannon trial and he would like to have a ruling upon their propriety.

The Court refused the challenge and the perspiring juror was accepted as one of the twelve "good men and true" who were to find the defendant guilty of cohabiting unlawfully with more than one woman.

Another juror, also a non-Mormon, had had two wives, but had married the second after the death of the first.

MR. BROWN.—"Have you ever lived or cohabited with any other woman than those two wives?"

JUROR.—"I decline to answer."

He was challenged by the defense.

MR. DICKSON.—"While you had a wife did you ever practice unlawful cohabitation?"

"No, sir."

MR. BROWN.—"While you were married did you ever have intercourse with any other woman than your wife?"

The juror here manifested some embarrassment, and the Court informed Mr. Brown that the question was not a proper one.



The challenge was denied and the juror accepted.

The panel of the jury was not complete until next morning. All Mormons were excluded. The twelve jurymen were M. S. Simmons, T. G. M. Smith, J. M. Richardson, E. R. Clute, Peter Clays, W. D. Palmer, E. R. Kessler, C. J. Smith, W. F. Raybould, William A. Pitt, Thomas Davis and Samuel Levy.

The clerk read to the jury the indictment charging A. Milton Musser with unlawful cohabitation with Belinda Pratt Musser, Mary White Musser and Annie Seegmiller Musser.

Judge Sutherland, for the defense, objected to the receiving of testimony, alleging the insufficiency of the indictment. It did not show that the defendant was a "male person." Mr. Varian submitted that the name "Milton" indicated the sex of the defendant. The Court overruled the objection.

Judge Sutherland then objected to the indictment on the ground that it did not indicate that any form of marriage had been gone through with by the defendant and the women named.

The Court stated that it was not "marriage," but "holding out to the world as wives," that constituted the crime in this case. Mr. Dickson argued to the same effect, and Judge Sutherland then quoted from the Court's decision in the Cannon case in support of his objection.

Judge Zane explained that when a man lived with two or more women as his wives, he was guilty of unlawful cohabitation, whether or not there had been any form of marriage between them. It was the example, the appearance of marriage, at which the law was aimed.

Judge Sutherland replied that such was his understanding of the Court's position, and it was precisely for this reason that he objected to the indictment, which did not state that there was such an appearance. The Constitution required a particularity of charge in the indictment. It should convey the idea of cohabitation with those admitted to be wives. The Court ruled that the indictment as it stood was sufficient.

The witnesses were then examined, the first and principal one being Mrs. Annie Musser Sheets, the defendant's daughter. By her it was proved that the three women named in the indictment were recognized as her father's wives, though she had never heard him refer to them as such. They all had children, and at one time, about four months prior to the trial, they dwelt in the First Ward, Salt Lake City, Belinda and Mary in the same house—No. 769 S. Eighth East Street—but in separate suites of rooms, and Annie in a house adjoining; the grounds of each residence communicating by a gate. Belinda did not live there now, but resided at her new home in the Eighteenth Ward. The defendant lived in the house occupied by Mary and Belinda. Witness had taken meals with the former, but not with the latter, and had occasionally slept in Mary's side of the house. Her father's bed-room was between Belinda's sleeping apartment and Mary's sitting room on the ground floor. The house had three outside doors, one opening into the defendant's room, one into Belinda's and the other into Mary's apartments. Belinda only occupied part of this house—the west side—until her new house was finished. She moved out of Mary's house into her Eighteenth Ward home in December, 1884. Belinda's children were Parley, Minnie and Arthur, aged respectively about eleven, six and three years; Mary's—Samuel, aged nineteen or twenty; Don, seventeen; Joseph, fourteen; Gertrude, eight; Blanche, between two and three; Annie's—Eva, eight years; Fred, six, and Moroni, four or five. Witness had never seen an infant at Annie's house.

Mrs. Lizzie Lee and Mrs. Annie Rideout were put upon the stand successively. The only additional item obtained was that Mrs. Annie Musser's youngest child was about one and a half years old. The other witnesses were Charles Brown, clerk, and Joseph Warburton, Bishop, of the First Ward; M. F. Eakle, the school teacher of that district, and George M. Cannon, recorder of Salt Lake County. Nothing material was elicited except from the last witness, who produced records showing that the defendant, in the summer of 1883, had deeded to each of the three women named in the indictment a

separate home. The evidence was all in by the evening of the second day of the trial, and the court adjourned till next morning—May 2nd—at 10 o'clock.

At that time the arguments began and occupied most of the morning session. Mr. Dickson spoke first and was followed by Messrs. Brown and Bennett for the defense. Mr. Varian closed.

The Judge charged the jury, stating that if they believed beyond a reasonable doubt that the defendant had lived "in the habit and repute of marriage" with the women named, or with any two of them, they should bring in a verdict of guilty.

A verdict of guilty was accordingly rendered, the jury taking only about twenty minutes to deliberate. Saturday, May 9th, was the time set for passing sentence.

Three other polygamous cases were disposed of by Judge Zane about this time. They were those of Claudius V. Spencer, James C. Watson and Parley P. Pratt. The first named defendant, on the morning of May 1st, came into court and pleaded guilty. Judge Zane was unusually lenient in this case. After binding the defendant by a strict promise to obey the law in future, he suspended sentence; though it was understood that the suspension was only "during good behavior." The other two cases were dealt with on May 2nd, the day the Musser trial closed. The Spencer incident had occurred during a lull in those proceedings. Elders Watson and Pratt both pleaded guilty to unlawful cohabitation—the same charge as in the Spencer case—and a polygamy count against Elder Pratt was dismissed. In the Watson case sentence was deferred until May 9th.

Elder Pratt was sentenced at once. His attorney, F. S. Richards, requested the Court to take into consideration the facts that his client was a poor man, with a family dependent upon him, and that he had saved the Government expense by pleading guilty. The Judge then asked the prisoner if he proposed to obey the law in future. The latter replied that he did not propose to make any promises; whereat the Judge grew stern. He declared

that the offense of unlawful cohabitation was not visited by the statute with a severe punishment, as compared with that for polygamy, though he did not see much difference in the crimes; and as the defendant had refused to agree to cease cohabiting with his wives, the Court saw no good reason why lenity should be shown. The defendant was fined three hundred dollars and sentenced to six months' imprisonment—the full penalty of the law. The Judge, in his warmth, added the words “at hard labor” to the term of imprisonment; but being reminded that there was no law to sustain that portion of the sentence, he ordered it to be eliminated.

The afternoon of the day upon which this incident occurred—Saturday May 2nd—was the time appointed for holding mass meetings throughout the Territory to pass upon the “Declaration of Grievances and Protest,” prepared by the Committee chosen at the General Conference in April. The meetings were held accordingly, and rousing ones they were.

The assemblage at Salt Lake City—which convened in the great Tabernacle—was one of the largest, and the proceedings among the most spirited, that Utah has ever known. One o'clock was the hour set for commencing. Hon. William Jennings called the meeting to order; Hon. John T. Caine was chosen chairman, and Heber M. Wells, secretary. William Jennings, Thomas G. Webber, Elias A. Smith, Caleb D. Brinton, Mary E. Cook and Roumania B. Pratt were made vice-chairmen, and William M. Stewart and Cornelia Horne Clayton assistant secretaries. O. F. Whitney had been previously appointed to read the Declaration.

Secretary Wells having read the call for the meeting, the Tabernacle Choir sang with gusto the stirring Mormon hymn, “O Say What is Truth.” Prayer was offered by Apostle H. J. Grant. After music by the bands—the Sixteenth Ward and Sunday School Union brass bands being in attendance—Chairman Caine delivered an address stating the object of the gathering and sketching the history of the Mormon people before and after the founding of Utah. The speech was warmly applauded. Next came the reading of the

## DECLARATION OF GRIEVANCES AND PROTEST.

*To the President and People of the United States.*

FELLOW CITIZENS.—A condition of affairs imperiling the vital interests of the vast majority of the people of Utah and their co-religionists in the neighboring States and Territories, impels us, their representatives, to address you. Our rights as American citizens are trampled upon, and believing it our imperative duty, in the presence of such a danger, to protest against the gigantic evil which threatens, not only our liberties, but the liberties of every freeman, we, in general mass meeting assembled, in the name of freedom, justice and humanity make this appeal for relief and protection.

We are unpopular with our fellow-countrymen; it is our religion which makes us so; we are a small minority in their midst: but we have yet to learn that these are grounds upon which to justify, in a land of liberty, the acts of oppression which we, as a people, from the beginning of our history, have been made to suffer.

As to our religious faith, it is based upon evidence, which to our minds is conclusive; convictions not to be destroyed by legislative enactments or judicial decisions. Force may enslave the body, but it cannot convince the mind. To yield, at the demand of the legislator or the judge, the rights of conscience, would prove us recreant to every duty we owe to God and man. Among the principles of our religion is that of immediate revelation from God; one of the doctrines so revealed is celestial or plural marriage, for which, ostensibly, we are stigmatized and hated. This is a vital part of our religion, the decisions of courts to the contrary notwithstanding. Even the Utah Commission concede this. In their report to the secretary of the interior, November, 1884, speaking of plural marriage, they say: "This article of their faith is as much an essential and substantial part of their creed as their belief in baptism, repentance for the forgiveness of sins, and the like.  
\* \* \* All orthodox Mormons believe polygamy to be right, and that it is an essential part of their creed."

That the Latter-day Saints should view this as a principle of their religion may require explanation. Polygamy, as understood among occidental nations, is a system of sensuality, and it is difficult for people among them to conceive how it can be associated with pure religion. But the Latter-day Saints believe that the marriage relation is one which, when properly solemnized here, exists in eternity. Every faithful woman in the Church believes that in order to insure her exaltation in the presence of God and the Lamb she should be married or sealed to an upright, faithful man. Acting upon this belief, these alliances are formed while on the earth; upon the principle that the man is not without the woman nor the woman without the man in the Lord. They firmly believe that God has revealed this to them as a command, but while patriarchal marriage, as it is termed, is a part of their faith and practice, they have no idea that it should become universal. The equality of the sexes, if no other reason, would prevent this. It is a mistaken idea that our Church favors the propagation of this doctrine or seeks to establish it as a universal system. At the same time we fully believe that women should be married, even if two or three of them, as in the family of Abraham, Jacob and others, become the wives of one man. Instead, therefore, of our system of marriage promoting sensuality, experience has proved that it checks it: and instead of being destructive of the family relation, it is preservative of it.

Plural marriage was publicly proclaimed a doctrine of the Church in 1852. Congress declared it a crime in 1862: but the law enacted against it remained for seventeen years a dead letter, the Federal officials hesitating to enforce it, as if they doubted its constitutionality. The law of 1862 was not declared constitutional until the 6th of January, 1879. Plural marriage, therefore, was openly taught and practiced ten years before any law existed against it: and twenty-seven years had elapsed from the time of its first public promulgation, until the Supreme Court decided the law to be constitutional. Thus it is apparent that plural marriage was not introduced in violation of law, but the law was enacted against this principle of our religion.

The charges of treason and rebellion made against our people are as absurd as they are untrue. We have given too many proofs of our loyalty for such accusations to have weight. Thrice driven from our homes, and while fleeing from the confines of the nation which refused us protection, a call was made upon us for five hundred men to assist in fighting our country's battles in Mexico. They were promptly furnished, though it took the flower of the camp—the able bodied men of that band of refugees. They left their mothers, wives and little ones, encamped in tents and wagons upon the prairies, and performed an unparalleled march of two thousand miles, over barren plains and bleak mountains, to the scene of action, where they rendered signal service in their country's cause. The main body of exiles continued their western flight until they reached the Rocky Mountains, where they unfurled the Stars and Stripes, which had led their desert march, and two years after framed a republican constitution and applied for admission as a State into the Union. Are these evidences of disloyalty?

All through our history the general Government has seemed to regard us less as loyal American citizens than as a dangerous alien element. It may have been induced at times to recognize that we had some justice on our side, but it has never come to our defense. To a delegation which narrated in burning words the story of our wrongs in Missouri, the chief magistrate of the nation made the humiliating confession that though our cause was just he could do nothing for us. The land whose Constitution, in the language of its framers, was hoped to be broad enough to shelter under its mantle the Jew, the Mohammedan, the Pagan, as well as the Christian, has scarcely been able to tolerate, much less to protect, the numerically insignificant Mormons. The general Government has ever manifested a readiness to give ear to the unsupported charges of evil-disposed persons against us, and has sought to correct alleged evils with extreme rigor. We point particularly to the inglorious crusade of 1857-8 known as the "Mormon War," based upon the falsehoods of a Federal official, when the Executive dispatched an army to whip us into a loyalty from which, on investigation, it was proved we had never departed. Our rebellion was found to be what it always has been, the mere creation of an enemy's fancy.

The authorities at Washington have disregarded our rights in the matter of local self-government. As early as 1849 the people of Utah framed a State Constitution, and applied for admission into the Union. Their application was repeated, as conditions became more favorable, first in 1856, again in 1862, then in 1872, and lastly in 1882, and each time has been ignored. A Territorial government is not a republican institution, but for thirty-five years we have been compelled to accept the colonial conditions which it imposes, and denied the most precious of all rights—that of self-government. Only for

the first ten years of our existence in the mountains, were we vouchsafed this precious boon to any considerable degree, during which time a man of our choice occupied the position of governor. We possess every qualification for statehood—population, wealth, stability of commerce and society. No reasonable excuses can be assigned for the refusal of our application. We submit that it should, of right, be considered and favorably acted upon.

It has been the undeviating policy to send strangers into our midst as governors, judges, prosecuting attorneys and marshals, men who, with honorable exceptions, had no interest in the common welfare. We complain not only of the personal character of these officials, and that they have acted the part of petty despots among us, trampling on our liberties, assuming prerogatives they never could presume to exercise except among so unpopular a people, and haughtily ignoring our rights and feelings, but also that where this disposition has not been sufficiently pronounced, popular clamor, tending to engender and develop it, has been so strong that fair-minded, just men have enjoyed but short terms of office, while those who possessed the one qualification of hatred of the Mormon people were kept secure in seats which they almost daily disgraced.

We complain of repeated manifestations of ill-feeling from the parent Government. Even in small country towns Mormon postmasters have been displaced for strangers—in some instances mere transients, who in many cases have been retained in office although serious charges, supported by evidence, sworn to by reputable citizens, have been preferred against them. Mormons have been frequently removed without just cause. The names of post offices in towns named for leading and beloved citizens—men who laid the foundation for the Territory's prosperity—have been changed at the suggestion or the whim of some small-souled bigot or insignificant minority of petitioners, the Federal Government in all these movements using its power prejudicially to the great majority of the people.

Our numerous petitions, protests and memorials in our own defense have been usually passed over unnoticed, while petitions urging governmental action against us, from religious denominations unacquainted with us except from hearsay, have been accorded consideration and generally acted upon. Sixty-five thousand names appended to a document asking for an investigation of the Utah situation before the Edmunds Act should be passed—the signatures of the people directly interested,—were cast aside as of no moment, and the odious law was pushed to its consummation.

The Commissioners appointed under the Edmunds Law have grossly abused the authority conferred upon them, and have usurped extraordinary, illegal and arbitrary powers. While their sole duty under the law was to appoint registration and election officers and to canvass the returns and issue certificates of election to members of the Legislative Assembly, they have illegally assumed to exercise important legislative and judicial functions. They officiously formulated an unauthorized and illegal expurgatory test-oath, covering the whole life of the individual, and required each elector in the Territory to take it before he could register or vote; and by their order, the names of all persons who failed to take this oath were stricken off the registry list. They so constructed the test-oath that it could not be taken by any person who had ever lived in polygamy or who cohabited with more than one woman "in the marriage relation," but it could be,

and was, taken by persons who cohabited with more than one woman *not in the marriage relation*—thus disfranchising only Mormons and permitting non-Mormon violators of the law to register and vote. They have arbitrarily assumed to exercise legislative powers by the promulgation of rules and orders which, in effect, materially changed the existing laws and excluded from the polls thousands of legal voters who have since been restored to the privileges of electors by the decision of the Supreme Court of the United States. They have presumed to exercise the highest order of judicial authority, by declaring void the acts of the Legislative Assembly of the Territory of Utah which provide for the election of Territorial officers, and they have arbitrarily, and without authority of law, forbidden and prevented the canvass and return of any votes for these officers since the passing of the Edmunds Law: thus completely nullifying and abrogating statutes of the Territory which have received the implied sanction of Congress, and have never been pronounced invalid by the courts, but which have been in force and acted upon as valid laws for many years. They have constituted themselves a supreme tribunal for the determination of all matters in the Territory pertaining to elections and the qualifications of voters, and their opinions and orders upon these subjects have been regarded by their appointees as the supreme law of the land. They have grossly abused their authority in the appointment of registration officers by selecting for such positions, whenever possible, only such persons as belong to the Anti-Mormon faction, denying to the majority party, whose members comprise four-fifths of the population of the Territory, representation among the registrars. And in the appointment of judges of elections they have either refused the majority party any representative at all or have only given it one of the three judges in each precinct. They have assumed to be charged, as the representatives of the Federal Government here, with the duty of suppressing polygamy, and have presumed to advise the President and Congress as to the kind of legislation they deemed necessary for that purpose, recommending the most radical and extreme measures, thereby showing themselves the pronounced enemies of the Mormon people.

We complain against the injustice done us by the United States officials sent to execute the laws: they have generally allied themselves with sectarian priests and political adventurers, lending their executive or judicial influence to foment local excitement, and degrade us in the estimation of people abroad. The governors of Utah, possessing absolute veto power, have usually been despotic in their ministerial acts. Governor Shaffer in 1870 forbade the militia to muster, drill or assemble for any purpose. So far was this order carried into effect that the aid of Federal troops was invoked to prevent a company of militia in Salt Lake City from bearing arms in a public celebration of the anniversary of American Independence.

The present Governor especially has acted the part of a petty tyrant. In his official messages and reports, in his contributions to the press, and in his public addresses, he has constantly misrepresented the state of affairs in Utah, and seized upon every opportunity to arouse popular prejudice and hatred against her people. He sought to defeat the expressed will of the people by declaring a man receiving 1,357 votes elected over one for whom 18,568 were cast. He endeavored without authority of law to displace the officers of the Territory elected by the people, and fill their places with men of his own appointing. He has accused us of a lack of interest in educational matters, but



when a bill was passed by our Legislature appropriating money to build a University, he refused to sign it; the building, however, was erected with means advanced by private citizens and stands a monument to his shame. The Edmunds Act contemplates the discontinuance of the Utah Commission so soon as the Territorial Legislature should provide for filling the registration and election offices under the local laws; but when a bill was submitted to him providing for this, in full conformity with the Edmunds Law and other acts of Congress, he vetoed the bill and thus continued the Commissioners in office, contrary to the intention of Congress, to the annoyance of the people of Utah, and at great expense to the nation. The last Legislature passed a bill apportioning the representation of the Territory. This bill was drawn up in accordance with the Governor's suggestions, but when it was presented to him for his signature, he treated it with contemptuous silence, thus insulting the legislators and the people who elected them. These and many other similar acts brand him a despot, unworthy to govern among his fellowmen.

The Edmunds Law, which not only provides for the punishment of polygamy, but also cohabitation with more than one woman, whether in the marriage relation or outside of it, is made to operate upon one class of people only—the Mormons;—and yet of the non-Mormon class who transgress the law the name is legion. The paramour of mistresses and harlots, secure from prosecution, walks the streets in open day. No United States official puts a "spotter" on his trail, or makes an effort to drag his deeds of shame and guilt before a judge and jury for investigation and punishment. But note the contrast:—In Utah, Idaho, and Arizona a concerted assault is made upon the Mormon people. "Spotters" and spies dog their footsteps. Delators thrust themselves into bed chambers and watch at windows. Children are questioned upon the streets as to the marital relations of their parents. Families are dragged before commissioners and grand juries, and on pain of punishment for contempt, are compelled to testify against their fathers and husbands. Modest women are made to answer shamefully indecent questions as to the sexual relations of men and women. Attempts are made to bribe men to work up cases against their neighbors. Notoriously disreputable characters are employed to spy into men's family relations. Contrary to good law, persons accused of crime are esteemed guilty until they prove themselves innocent. The burden of proof rests upon the accused instead of the accuser. Trial by jury in the Territories is no longer a safeguard against injustice to a Mormon accused of crime. Accusation is equivalent to conviction. Juries are packed to convict, and if they fail to find a verdict against the accused when he is a Mormon, insult and abuse are heaped upon them by the Anti-Mormon press. Men, fearful of not obtaining justice in the courts, are avoiding arrest, believing no fair and impartial trial can be had under existing circumstances. There are persons in the community who contracted plural marriages before there was any law against the practice, and who have not since entered into such relations. After the passage of the Edmunds Act, and out of deference to its requirements, they ceased to cohabit with their plural wives. Such men have violated no law and yet they are harassed and prosecuted. In consequence of this crusade, which bears all the aspects of a religious persecution, business relations are disturbed: values of every kind unsettled; neighborhoods agitated and alarmed; and property of the people generally jeopardized. It not only affects alleged violators of the law, but those who are innocent of transgressing it. It works a hardship upon the entire com-

munity, upon the innocent as well as the guilty. The overwhelming majority of the Mormon people are monogamists and but a small percentage are even suspected of violating the law. In the name of this great majority, we pray that this unusual, cruel and partial administration of the law shall cease. If the "conscience of the people" demands that the law be enforced, let it be enforced in all the Territories and in the District of Columbia as well as in Utah—upon Jews and Gentiles as well as upon the Mormons.

These are some of our grievances. Now hear our protest:

We protest against unfair treatment on the part of the general Government.

We protest against a continuance of territorial bondage, subversive of the rights of free-men and contrary to the spirit of American institutions.

We protest against special legislation, the result of popular prejudice and religious interference.

We protest against the conscience of one class of citizens being made the criterion by which to judge another.

We protest against the tyranny of Federal officials, and the continuance in office of men who disgrace their positions and use their official powers as a means of oppression.

We protest against the partial administration of the Edmunds law—the punishing of one class for practicing their religion, and exempting from prosecution the votaries of lust and crime.

We protest against the breaking of family relations formed previous to the passage of the Edmunds law, and the depriving of women and children of the support of their fathers and husbands.

We protest against the prosecution of persons, many of whom are infirm and aged, who entered into plural marriage before it was declared a crime and have never violated any law.

We respectfully ask for the appointment by the President of a commission to fairly and thoroughly investigate the Utah situation; and pending its report, we solemnly protest against the continuance of this merciless crusade.

A tremendous demonstration was evoked. Nearly every sentence was punctuated with applause. At times the reader's voice was drowned in the tumult, and more than once he was compelled to pause and allow the tempest of sound to subside. He closed amid a whirlwind of cheers and hand-clappings that continued for several minutes.

Mayor James Sharp moved the adoption of the Declaration and Protest, and the motion having been seconded, ringing speeches were made by John Q. Cannon, Junius F. Wells, Franklin S. Richards and B. H. Roberts. The applause showered upon the speakers was profuse and prolonged. The motion was carried unanimously amid unbounded enthusiasm.

Messrs. John T. Caine, John W. Taylor and John Q. Cannon were chosen a committee to proceed to Washington and present the document to the President of the United States.

The choir sang "America," benediction was pronounced, and the meeting adjourned *sine die*.

Barring one incident, everything connected with the affair gave the utmost satisfaction to its originators. The incident in question was an indignity offered to U. S. Attorney Dickson, Assistant U. S. Attorney Varian and U. S. Commissioner McKay, who attended the meeting and occupied seats in the gallery. Arising to depart before the proceedings were over, they were recognized by a portion of the audience, and hissed as they passed out of the building. The chairman promptly checked the unseemly demonstration, which was much regretted by most of those present, and participated in only by a small minority.

The committee chosen to convey the Declaration and Protest to Washington immediately set out upon their errand. Arriving at the capital, they sought the earliest opportunity to see the President. Their interview with him took place on the 13th of May, in the library of the White House. As the delegation from Utah entered, the President was seated at his desk; he immediately arose and shook hands with Mr. Caine, and was then introduced to Mr. Taylor and Mr. Cannon. Mr. Caine stated the object of the visit and presented the document that he and his associates had been commissioned to deliver.

The President listened courteously and attentively to the statement, and upon its conclusion said: "Well, gentlemen, so far as the Edmunds Law is concerned, I had nothing to do with that; though of course it is my duty to see that it is enforced, as well as all other laws. You are entitled to fair consideration, however, and so far as any appointments I shall make are concerned, I will endeavor to give you a character of men who will see that the law is impartially administered. I hope soon to be able to get at these matters, but it will require a little time." The President's face broke into a smile

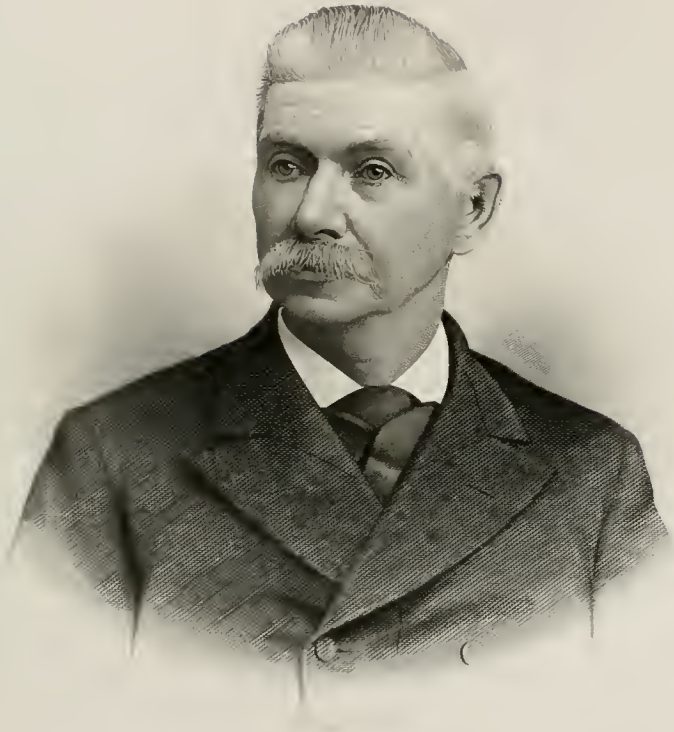
as he concluded: "I wish you, out there, could be like the rest of us."

"All we ask," said Mr. Caine, "is that the law shall be impartially administered."

"You are entitled to that," said the President, "and so far as I am concerned, I shall see that it is done. I will give these matters my attention as carefully as possible."

The delegation then saluted the Chief Magistrate and withdrew.

President Cleveland was as good as his word. It took him some time to act, for he was very busy with other matters, and was wedded to his policy of "Civil Service Reform," which made him reluctant to remove from office his predecessor's appointees, except for "offensive partisanship" or other good and sufficient cause. This is one reason why he permitted the Republican office-holders in Utah who were carrying on "The Crusade," to retain their places. Another reason is, that he knew summary action on his part against those officials—who had the sympathy of nearly the whole country to sustain them—would have been to place in the hands of Republicanism an effective weapon against Democracy. The ax fell for them eventually, and with one or two exceptions their successors were men of more conservative principles and practices.



*Francis A. Brown*



## CHAPTER XVI.

1885.

THE CRUSADE CONTINUED—ELDERS ANGUS M. CANNON, A. MILTON MUSSER AND JAMES C. WATSON SENT TO THE PENITENTIARY—THE CANNON AND MUSSER CASES ON APPEAL—JUDGE POWERS DISSENTS FROM HIS ASSOCIATES—THE CANNON CASE CARRIED TO WASHINGTON—PLURAL WIVES IMPRISONED FOR REFUSING TO TESTIFY AGAINST THEIR HUSBANDS—MORE CONVICTS FOR CONSCIENCE'S SAKE—FRANCIS A. BROWN'S HEROIC SPEECH—ARREST AND DISCHARGE OF APOSTLE JOHN HENRY SMITH—INDEPENDENCE DAY 1885—THE AMERICAN FLAG HALF-MASTED AT SALT LAKE CITY—THE MORMONS IN MOURNING OVER THEIR LOST LIBERTIES—THE ACT MISCONSTRUED BY THE GENTILES—MOSES THATCHER'S FOURTH OF JULY SPEECH AT OGDEN—THE THORN INCEST CASE—ANOTHER PLURAL WIFE SENT TO PRISON—ASSAULT UPON THE HOMES OF MESSRS. DICKSON, VARIAN AND M'KAY.

JUST a week after the great gathering in the Mormon Tabernacle described in the previous chapter, a somewhat remarkable scene was witnessed in the District Court at Salt Lake City. It was the passing of sentence upon three Elders of the Church of Jesus Christ of Latter-day Saints, convicted under the Edmunds Law of living with or acknowledging their plural wives. The occasion was one of intense public interest, and the court room was crowded to its utmost capacity. Deputy marshals at the outer doors kept back three-fourths of the throng that clamored and struggled for admittance into the building.

Inside the rail enclosing the judgment seat sat the three defendants, calm, composed and even cheerful, awaiting the sentences about to be pronounced. The Cannon case was the first one called. Therein a motion for a new trial was made, principally upon the following grounds:

That the Court erred in charging the jury as he did and in refusing to charge as requested by the defendant: also in admitting testimony objected to by the defendant and in rejecting testimony offered by him.

That the verdict was contrary to law and against the evidence in the case.

That the juror, A. M. Johnson, was not a qualified juror in the case, for the reason that he had been guilty of bigamy.

The motion was argued and overruled. Judge Zane then asked the defendant if he had anything to say before judgment was pronounced upon him.

“Nothing,” replied Elder Cannon.

The Judge then stated that the law gave him a discretion in the punishment of the offense for which the defendant stood indicted, and he was of the opinion that in cases of this kind, where the offense was continuous, it was proper to inquire respecting intentions as to the future. The nature of the answer would be taken into consideration by the Court in pronouncing judgment. The Court did not wish to be understood as trying to humiliate the defendant or to extort a statement from him, but, said the Judge, “I would love to know that you could conform to the law.”

Elder Cannon then said: “I cannot state what I will do in the future. I love the country, I love its institutions, and I have become a citizen. When I did so I had no idea that a statute would be passed making my faith and religion a crime; but having made that allegiance, I can only say that I have used the utmost of my power to honor my God, my family and my country. In eating with my children day by day, and showing an impartiality in meeting with them around the board, with the mother who was wont to wait upon them, I was unconscious of any crime. I did not think I would be made a criminal for that. My record is before my country; the consciousness of my heart is visible to the God who created me, and the rectitude that has marked my life and conduct with this people bears me up to receive such a sentence as your Honor shall see fit to impose upon me.”

At the close of this address, the audience broke into applause, which seemed to annoy the Judge, who, however, maintained his equanimity. He said that as the defendant had declined to promise to obey the law, and advise others to obey it, no leniency could be



shown him. He would be fined in the sum of three hundred dollars and imprisoned in the Penitentiary for six months. Application for bail pending appeal was refused, and the defendant ordered into the custody of the Marshal.

The Musser case was next called. A motion for a new trial having been made and overruled, the defendant was asked if he had anything to say. Mr. Musser arose and stated that Mr. C. W. Stayner, one of his counsel, would, if the Court pleased, read a communication. Mr. Stayner then read an address signed by the defendant, in which he stated that in legally conveying to his wives their separate homes, and conducting himself toward them as he had, he thought he had done all that was necessary in order to conform to the law, and he now asked the Court clearly to define what course he should pursue in relation to his several families when he should emerge from prison, in order to be safe from future prosecution.

COURT.—“You ask what it is necessary for you to do in order to comply with the law. A general statement would be that it is necessary for you to live with but one wife, and treat but one of those ladies as your wife. The law does not forbid your supporting your other wives, or bringing up your children as best you can. But to live with more than one woman as your wife is a crime. Whatever your religious belief may be about it, the laws of the United States have defined it as a crime. So long as your religion consists of belief and worship it is protected by the Constitution, but when acts, overt acts, occur, the State has the right to control.” Judge Zane then read from the decision of the Supreme Court of the United States in the Reynolds case, in support of his position.

ELDER MUSSER (with a tinge of irony).—“Your Honor’s explanations are certainly very lucid, very logical, and very conclusive. I have three wives, as I have admitted here in this communication. Now am I at liberty to choose which one of the three I may continue to live with?”

COURT.—“You may live with either one, provided you live with

her as your wife. Unlawful cohabitation consists in living with more than one woman as your wife. It would not be a violation of this law forbidding unlawful cohabitation if you were to live with one, and only one, even though she might not be your lawful wife."

ELDER MUSSER.—"May I ask the Judge how intimate my relations may be with the other ladies with whom I have made covenants, all of them alike—I mean outside of illicit relations? What must be my conduct and deportment in relation to the other two? I want to do what is right in these matters. I thought I had been living pretty circumspectly, but it does seem that the most insignificant evidence will be sufficient, and I don't want to be entrapped again. I mean no disrespect to the Court in asking these questions."

COURT.—"I undertook to state, but probably did not state it quite plainly, that you could live with one of them as your wife."

ELDER MUSSER.—"May I visit the others, and be on familiar and fraternal terms with them?"

COURT.—"You may treat your other wives as friends."

ELDER MUSSER.—"Would you suggest that I divorce them? The ladies who are married to me have made covenants with me, and I with them, and they are, as I have stated in this communication, of a very sacred character. Now, if I am not permitted to be a husband to them in everything that that implies, they, in turn, may proceed against me for violation of that contract."

The Court informed the defendant that polygamous covenants, or those requiring him to violate the law, were not binding.

ELDER MUSSER (returning to the charge).—"Can I attend these ladies to the theater, divine service, or any public celebration?"

COURT.—"If you were living with them in the same house a portion of the time, the fact that you had taken them to the theater would be pretty strong circumstantial evidence against you."  
[Laughter.]

ELDER MUSSER.—"It is this strong circumstantial evidence that I want to prevent appearing against me in the future, and it is for

these reasons that I respectfully submit the questions. I don't clearly and definitely understand my duties in reference to these ladies, and for fear that I may be entrapped, as I have already been, and for which I expect to be fined and imprisoned—for doing what I supposed to be strictly right, I ask these questions."

COURT.—"There are an infinite number of examples. You must treat them as though they were not your wives."

ELDER MUSSER (with warmth).—"That I could not do. I do not wish to be defiant, nor do I wish to say in a threatening or ostentatious manner what I will do in regard to these things. My families are too dear to me to expect anything of the character that your honor suggests. It would be impossible for me to comply with such demands. If a gentleman were to meet me on the street, and ask me to make a concession of that character, I would tell him it was a personal insult. I mean no disrespect whatever. He might as well ask me what I would take in dollars and cents for one of my children, or to sell one of my wives for money. I cannot consent to anything of the kind, and I am willing to meet any consequences that the Court feels in duty bound to impose."

COURT.—"Well, Mr. Musser, if you cannot consent to obey and respect the laws of your country, you must take the consequences of your disobedience."

ELDER MUSSER.—"I am willing to do so."

COURT.—"Inasmuch as you do not propose to submit to the law in the future, you will probably be involved in trouble again. I think it would be better for you and everybody else, if that venerable man who stands at the head of your Church would just stand up, as every good citizen does, and say that he will obey the laws of the country and teach others to do the same; he would never get into the Penitentiary. You go there because you will not submit to the laws of your country. The sentence in your case will be a fine of three hundred dollars and imprisonment in the Penitentiary for the term of six months."

The third case was disposed of very quickly. Evidently the

Judge felt that a lecture to Mr. Watson would be, as it had been to Messrs. Cannon and Musser, ammunition wasted. He merely remarked that he would give this defendant the same privilege as that accorded to the others—the opportunity of making a final statement. “I have nothing to say,” answered Watson, whereupon the full penalty of the law for his offense was imposed upon him.

The three prisoners were taken, or rather betook themselves, to the Penitentiary the same afternoon. At the conclusion of the court proceedings, each was permitted to go home, accompanied by a deputy marshal, with the understanding that at four o'clock they would proceed in their own conveyances to the place of imprisonment.

The Cannon and Musser cases, appealed to the Supreme Court of the Territory, were argued before that tribunal on the 11th of June, 1885. The Supreme Bench of Utah then consisted of Chief Justice Zane and Associate Justices Boreman and Powers; the last-named magistrate having succeeded Judge Emerson in the First District a short time before.\* An able and exhaustive argument was made for the appellants by Judge J. G. Sutlerland, but it was a futile effort so far as visible results were concerned; glancing from the steel-like front of crusading Justice like an arrow from a coat of mail. At least a majority of the Court—Judges Zane and Boreman—were committed to the “holding out” or “habit and repute of marriage” theory, and any argument opposing it was, as to them, water spilt upon the ground. As members of the Supreme Court—such was the absurdity of the system then in vogue, allowing but three Federal Judges to a Territory—they had but to reiterate opinions already expressed by them in the district courts over which they respectively presided. A majority decision by this twain, affirming, as Supreme Court Justices, the rulings of Judge Zane in the

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\*Judge Orlando W. Powers was appointed by President Cleveland an associate justice of Utah April 20, 1885. Influences brought to bear against him from Michigan, the State from which he hailed, caused the Senate to refuse to confirm the appointment. Judge Powers served for many months when—the Senate still withholding his confirmation—the appointment was withdrawn by the President.

Cannon and Musser cases, and denying new trials to the defendants, was delivered on the 27th of June.

Judge Powers dissented from his associates, wholly as to the Musser case, in part as to the Cannon case. He maintained that in the former, manifest injustice was done the defendant. Not only was he convicted on the weakest evidence, but a portion of that evidence extended back for years prior to the enactment of the Edmunds Law. Mr. Musser had also been accused to the jury, by the Assistant U. S. Attorney, of putting witnesses beyond the reach of the prosecution. The failure of the Court to instruct the jury so as to protect the defendant against the effect of this procedure, with other errors in the record, caused Judge Powers to hold that Mr. Musser was entitled to a new trial. As to the Cannon case, while acquiescing in the construction put upon the term "cohabit" and in the result reached by the trial, he objected to the methods by which the defendant had been convicted. He believed that the Court erred in refusing to instruct the jury as desired by the defense.

The Musser case was carried no farther, but the Cannon case, which was made a test for all others of like character, went up on a writ of error to the Supreme Court of the United States. An appeal had been denied by Judge Zane, but the writ was granted by Mr. Justice Miller, at Washington, at the request of Mr. F. S. Richards, who represented to him the great importance of the matter to the people of Utah. The Cannon case was the first one, it will be remembered, in which it was held that sexual intercourse was not an essential element of cohabitation, as the term was used in the Edmunds Law. It was to obtain a definition of that indefinite term, a fixed and reasonable construction of the loose and elastic phrase "unlawful cohabitation," which Congress and the Utah courts did not seem to understand,—though they expected the Mormons to understand it and govern themselves accordingly—that the Cannon case was carried to Washington.

The defendant, Angus M. Cannon, remained in prison two months after the expiration of his term of sentence—thirty-three

days of which were remitted by law on account of good behavior—in order to get his case advanced upon the calendar of the United States Supreme Court.

His confreres, Messrs. Musser and Watson, were released after serving out their terms, less the usual remittance of time placed to their credit for good conduct. Subsequently Mr. Watson was again convicted and imprisoned for unlawful cohabitation.

The next polygamous case to enlist general attention was that in which William D. Newsom was the party defendant. He was arrested at Salt Lake City the day after Messrs. Cannon, Musser and Watson went to prison. The case owes its prominence to the imprisonment of Lucy Devereau, the defendant's plural wife, for refusing to answer as a witness certain questions, first before U. S. Commissioner McKay, and afterwards before the grand jury. Among the questions put to her were: "Who is the father of your child?" "Is Mr. Newsom its father?" For refusing to answer she was ordered by the Commissioner into the custody of the U. S. Marshal. The examination was continued on the following day, when the defendant was held in bonds of three thousand dollars to await the action of the grand jury. The imprisoned witness was then released. Ten days later she was before the grand jury, where she admitted that she had lived in the same house with the defendant, and that she had a child eight months old, but refused to answer the question, "Is not William D. Newsom the father of your little girl?" The witness was taken before Judge Zane, who, as she persisted in remaining silent, ordered that she be committed for contempt. She was taken to the Penitentiary where she remained for six weeks, her infant child sharing her imprisonment. Her husband was indicted for polygamy and unlawful cohabitation, for which he was tried, convicted, fined and imprisoned.

During the months of May and June many polygamists were arrested in and around Salt Lake City; among them Charles L. White, whose plural wife, Elizabeth Ann Starkey, was fined fifty dollars and sent to the Penitentiary by Commissioner McKay for

refusing to answer questions designed to criminate her husband. This was on the 20th of June. Subsequently similar questions were put to her by the grand jury, and on refusing to answer them, she was remanded to the Penitentiary by order of Judge Zane. She remained in prison for nearly three months, and was then liberated; Mr. White making her release one of the conditions of an arrangement between him and the U. S. Attorney, by which the defendant was to plead guilty to unlawful cohabitation and to have a charge of polygamy withdrawn.

Simultaneously with these arrests came those of James Taylor, Moroni Brown, Francis A. Brown, Job Pingree and James H. Nelson, Sr., at Ogden. Deputy Marshals Perkins and Brown attempted to enter the house of Mr. Nelson without a search warrant. His wife, a high-spirited woman, with some knowledge of law, and considerable knowledge of self-defense, would not submit to this indignity. She first pushed the officers out of the house, and then, snatching a picket from the fence, pursued them, belaboring one severely with the improvised weapon. Returning with the necessary papers, the deputies were received by Mrs. Nelson politely and shown through her domicile. She was afterwards prosecuted for assault.

At Beaver, on the 16th of May, the trial of William Fotheringham, for unlawful cohabitation, closed with a verdict of guilty. Elder Fotheringham was convicted for eating at his plural wife's table and acknowledging that he had more than one wife. Four days later he was sentenced by Judge Boreman to pay a fine of three hundred dollars and to pass three months behind bolts and bars; a moderate sentence compared with others. The Judge did not lecture the prisoner, nor endeavor to exact any promise from him regarding his future conduct.

The last days of June witnessed some animated proceedings in the Federal Court at Ogden. On the 29th of the month, the Nelson, Pingree and Taylor cases were before the court, but not for trial. The most important item of the proceedings was a ruling in the Pingree case to the effect that to establish the charge of unlawful

cohabitation it was not necessary to prove that the first or legal marriage had been consummated. These were about the first cases that arose in Weber County under the Edmunds Law, and the first with which Judge Powers, in his own district, had to deal. In disposing of them he manifested a disposition to be fair and impartial.

Next day—June 30th—occurred the trial of Bishop Francis A. Brown. The court room was crowded, and the proceedings, though brief, were intensely interesting. The defendant, being arraigned, pleaded not guilty to an indictment charging him with unlawful cohabitation. After the jury was empaneled and the indictment read to them, the defendant, at his own request, was sworn as a witness and addressed the Judge and jury.

He began by stating that he was descended from the old Puritan stock of New England, and that his forefathers fought for freedom in the war for American Independence. He had learned in his childhood to love his country and render strict obedience to her laws. Until twenty years of age, he had been traditionated in the doctrines of the Methodist Episcopal Church, but had then embraced the fulness of the Gospel as revealed through the Prophet Joseph Smith. He had been for over forty years a member of the Church of Jesus Christ of Latter-day Saints, and he knew that a more loyal people did not dwell in the United States nor in any other part of the earth. From an honest conviction that it was a pure principle—one that had emanated from God—he had accepted and entered into the order of celestial marriage; and, said he:

I have struggled in poverty now for nearly thirty years, to provide for my beloved wives and dear children as a kind husband and a fond father should; and I have kept inviolate my solemn vows and most sacred contracts that I made with those women up to the present time, to the best of my ability and I believe to their entire satisfaction.

I have as good and respectable a family as any monogamist in the United States or in the world, and I feel proud of them. My honorable Gentile neighbors, Mr. Read, Mr. Leland, Postmaster Littlefield and others, have never been disgraced by them, and I think have never had any cause to be ashamed of them.

I now ask your honor, what I am to do? Shall I break the most sacred obligations man can enter into, \* \* \* and sever the strongest ties of love and affection that have grown up in the human heart? Shall I abandon my wives and children



(who are as dear to me as any man's wife and children are to him) and cast them off upon the charities of a cold world?

I know not of what metal your honor is composed, but for myself, before I will prove recreant to my wives and children, and betray my trust, I will suffer my head to be severed from my body. I have not wronged a man or a woman on the earth during my life that I am aware of. I have trespassed on no one's rights to my knowledge. This is the first time in my life I have been called to answer to the charge of crime against the laws of my country. \* \* \*

No one ever heard me take the name of God in vain. No one ever saw me intoxicated. No one ever knew me to patronize houses of ill-fame or gambling dens. I have lived above reproach and set a Christian example before my family and all the world, and no one can justly accuse me of violating the laws of my country or of being guilty of committing any crime, unless it is a crime to love my wives and children. \* \* \*

If the conscience of the American people is outraged at my conduct in obeying what my conscience prompts me to be my duty to my God, and demand my liberty, they are welcome to it. Decisions of courts, enactments of congresses, and edicts of tyrants strike no terror to me, when they come in contact with my known duty to my God. \*

\* \* \* I bow submissively to an unconstitutional law, which your honor has the power to execute. I am in your hands, and if your honor thinks it will subserve the interest of our country or benefit humanity in any way by inflicting pains and penalties upon me for doing what I know to be my duty to my God, you can incarcerate me in prison. \* \* \* Death itself cannot obliterate the knowledge God has given me of this great latter-day work.

I stand here innocent of any crime. I have a conscience void of offense before God and all men. I am guiltless of violating any law of God or constitutional law of the land.

Now, while you are enjoying your liberty, and the immunities of a free government, and while gamblers, libertines and prostitutes can revel in sin and corruption, without the fear of prosecution, or of being deprived of their liberty, remember me and my brethren, innocent of any crime, whom you are instrumental in depriving of our liberties.

While you and yours are enjoying all the comforts and even luxuries of life, remember the innocent women and children you cause to suffer by tearing from them their only support.

I have made up my mind that while water runs, or grass grows, and a drop of blood flows through my veins, or I am permitted to breathe the breath of life, I shall obey the supreme laws of my God, in preference to the changeable and imperfect laws of man.

In conclusion, I wish to say to this Court, as you are a stranger among us and ignorant of our doctrines and practices, that we honor and respect you as a representative of our great Government. I entertain no malice in my heart towards this court or any of my accusers. \* \* \* With what measure you mete unto others it shall be measured unto you again.

I expect to stand before the bar of God in the court above, and give an account of the deeds done in the body, and if I cannot obtain my rights in the courts on earth, I

have no fear but what I shall receive equity and justice at the hands of God in heaven, and I can afford to wait. \* \* \* May God have mercy upon this court, and all who are engaged in this unholy crusade against an honest, virtuous, industrious, and God-fearing people!

This earnest address, delivered amid a deep silence, much impressed the Court and the spectators.\* Judge Powers told the jury that they were not to take any portion of the defendant's statement as evidence, except that relating to his having entered into plural marriage in 1857; whereupon Bishop Brown acknowledged that he continued to live with both his wives as such, and that he had children by them.

“Then the silence was great, and the jury smiled bright;  
And the judge was n't sorry the job was made light.”

The case was submitted without argument; no witnesses having been examined on either side. The Judge's charge was brief and to the point. Twelve minutes sufficed the jury to find a verdict of guilty. Sentence was deferred until the 11th of July.

On the second day of that month occurred the arrest, at Salt Lake City, of Apostle John Henry Smith, the most prominent Mormon, ecclesiastically considered, who had been taken into custody since the beginning of the crusade. He was arrested at his home by Deputy Marshal Collin, and half an hour later was before Commissioner McKay, undergoing examination for unlawful cohabitation. The proceedings were soon over. Several witnesses having been examined, the case against the Apostle was dismissed. The Commissioner remarked that while there was no doubt of a marriage between the defendant and his plural wife, Josephine Groesbeck,—the marriage with Sarah Farr Smith, the legal wife, not being denied—the fact that the defendant had recently returned from a

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\*Said the Salt Lake *Tribune*: “F. A. Brown, the Mormon Saint convicted in Ogden on Tuesday last by his own testimony, had the courage of his convictions. However much one may deplore such wrong-headedness, the admission must be made that here is a man; one who does not quibble and lie, and who scorns to show the white feather.”

three years' absence in Europe, and that the evidence respecting his conduct since that time was "a little mixed," would be construed in his favor.

No event connected with the crusade caused more excitement than the one about to be chronicled; namely, the half-masting of the Stars and Stripes, by certain Mormon citizens of Salt Lake City, on Saturday, July 4th, 1885; an act which, innocent in itself, and having behind it a pure and patriotic motive, was construed by the Gentiles as an insult to the flag and a demonstration of treason to the Government. The facts relating to the affair are these:

Early on the morning of the day in question—the 109th anniversary of American Independence—it was observed by such of the citizens as were abroad, that the flags of the City Hall, the County Court-House, the Salt Lake Theater, Zion's Co-operative Mercantile Institution, the Tithing office, the *Deseret News* office and the Gardo House were hanging at half-mast. These tokens, significant of general mourning, created much comment, and it was supposed at first that General Grant—whose spirit was then about to take its earthly flight—had passed away. This thought, however, was soon dispelled, as the flags upon other public buildings and at Fort Douglas were flying at full mast, and there were no bulletins announcing the death of the nation's hero. Many, seeing the symbol of sorrow only upon buildings owned or controlled by Mormons, supposed that President Taylor or some other dignitary among the Latter-day Saints was dead. Inquiry, however, revealed the fact that "the brethren on the underground" were all quite well.

Gradually the truth dawned upon the minds of the many, as it had burst suddenly at the beginning upon the understanding of a few. The starry banner had been half-masted as a sign of mourning indeed, but not over any individual. Nor did it signify, as some imagined, that those who placed it in that position were lamenting over the nation's birth, or hurling, by implication or inuendo, a satire at that glorious event. It meant to the Mormons—and it was intended to mean nothing more—that Liberty, over whose

nativity they had so long and patriotically rejoiced, now lay bleeding and in chains, so far as Utah was concerned, and that her citizens, with the exception of a small minority, were disposed to grieve rather than jubilate over the painful fact. Expressive of this sentiment, which was known to pervade nine-tenths of the community, some of the citizens in control of or having access to the buildings named, placed their flags at half-mast in token of the general sorrow.

To some of the Mormons, who saw how the act would be viewed and used, it was almost as offensive as it was to the Gentiles; but to the great majority, with whom the principle involved and the poetic propriety of the expression were paramount to all considerations of policy, it was deemed a perfectly proper manifestation.

The Gentiles were also divided in their opinions. Many, though highly indignant, secretly rejoiced over the event, which placed in their hands another club with which to belabor the bruised and half-broken back of the Mormon community. They at least were satisfied with what had taken place, though they shouted treason and rebellion till they were hoarse.

Some of the non-Mormons, willing to listen to an explanation of the matter, suspended judgment until they could make an investigation. U. S. Marshal Ireland, accompanied by Major Wilkes, Captain Evans and others, went to the City Hall and inquired for the Mayor. He was not in his office, but word was sent to him at the Assembly Hall, where a meeting was in progress. While awaiting his arrival, one of the U. S. Marshal's party asked why the city's flag had been placed at half-mast. He was told that it had been done by order of City Marshal William G. Phillips. That official, also sent for to the meeting in question, soon afterwards came upon the scene. Mayor Sharp did not appear. It was understood that he was in no way responsible for the half-masting of the flag, and was among those who deprecated the act.

The City Marshal was informed by Major Wilkes—who by the way was an ex-Confederate officer, and one of the jurors in the Clawson case—that Marshal Ireland, Captain Evans and himself

were a committee representing the citizens at large, and that they had been sent to ascertain the reason for the placing of the flag in the position it held on the liberty pole in front of the City Hall. Marshal Phillips at first treated the matter lightly, saying that it was "a whim of his;" but seeing that the committee was in earnest, he stated, in a serious vein, the real reason. He described how most of the citizens felt over the course pursued by the Federal courts and officials, and referred to the exile of the Mormon leaders, the imprisonment of some of the best men in the Territory, the breaking up of families, the midnight raids of the deputies, and the general terrorization of the community. These things had caused the people to mourn, and to regard this anniversary of the day they were wont to celebrate with rejoicings as a fitting time to give vent to their grief.

The explanation seemed to satisfy the committee that no insult was intended to the flag. They stated, however, that those who sent them thought "it looked very bad," and they asked in the interests of peace and order that the city's flag be either removed or run up to the staff-head. Marshal Phillips and the police demurred to this suggestion, and a discussion that grew warmer every moment ensued. Captain Evans,—who in the days of Brigham Young had been a U. S. deputy marshal, and in that capacity had guarded the Mormon leader when a prisoner in his own house—grew very angry, as did Police Officer Charles Crow, who opposed him in argument. The Captain said that to see the flag in that position—on this occasion of course—"made him as mad as when Fort Sumter was fired on." He rolled up his sleeves and started for the liberty pole, saying that the flag should go up to the top if he had to pull it up. The door was closed, shutting him in, whereupon he called upon those present to witness that he had been resisted while attempting to raise the American flag.

Marshal Ireland and Marshal Phillips now stepped aside to consult. The others repaired to the front steps of the hall, which was now besieged by an excited throng, to whom Captain Evans detailed

his grievance. One man, almost as much agitated as the Captain, said that the half-masting of the flag on such a day was to him a personal insult, and he was "going to pull it up."

"Try it," said a voice from the doorway.

"Will you shoot?" sneeringly asked another in the crowd.

"Shoot the like o' you?" echoed one of the officers—William Salmon—"Oh, no; I'd just twist you into here," indicating with his thumb the city jail.

"I'm going to have that flag up if I have to fight for it," vociferated the angry agitator.

"Oh, you're not of the right kind of stuff to fight," rejoined the officer, with exasperating coolness.

Stung by the taunt, the man sallied forth, saying that he would raise a force in five minutes to do the work. Just after his departure, Marshal Ireland reappeared, and, calling upon his friends to follow him, left the vicinity of the City Hall.

The result of the conference between him and Marshal Phillips was a promise by the latter to take down the flag. The ensign was lowered accordingly, and a crowd that had assembled awaiting this issue, now dispersed, or turned their attention elsewhere.

A telephone message from the citizens' committee to the County Court House, respecting the flag at that point, elicited the response from Sheriff John A. Groesbeck that he had "only just learned of it," and "would have it raised at once." The flag was raised. It seems to have been at the suggestion of Mr. Nathaniel V. Jones, an ex-county officer, that several of the flags were put at half-mast. He subsequently said, in a newspaper interview upon the subject: "I speak as an individual, but my feelings are that as the flag had been placed at half-mast and expressed the sentiments of the majority, I would not have allowed any mob to remove it, and so far as I am concerned, they would have had to walk over my body before they could have done it."

While these incidents were occurring in the city, the local

organization of the Grand Army of the Republic was celebrating the "Fourth" at Lindsay's Gardens, in the north-eastern suburbs. Thither, after the lowering of the flag at the City Hall, went a number of citizens, conveying the tidings of what had taken place. More excitement was thus created. Speeches by J. M. Benedict, John M. Young, Colonel Sells and the Reverend Mr. Thrall, were supplemented by the adoption of a resolution declaring the half-masting act an insult to the national emblem. A committee was appointed to proceed to town and demand the raising of the city's flag.

Governor Murray by this time had telephoned to General McCook, at Fort Douglas, for military aid to compel the raising of all the flags. The General, however, refused to interfere.

It was now three o'clock in the afternoon. At that hour a meeting, mostly of non-Mormons, convened at the Walker House to further consider the situation. Much heat and confusion prevailed, but finally a committee was appointed to wait upon Mayor Sharp and request, not only that the flag at the City Hall be unfurled to the breeze, but that he use his influence to have the flags still flying at half-mast run up to their staff-heads. The Mayor, who was found at the Utah Central Railroad office, acceded to the request, ordering the city's flag placed in position. The order was executed by members of the fire brigade. Hon. William Jennings, who was also at the railroad office when the committee called, promised to see Superintendent H. S. Eldredge and have the Z. C. M. I. flag raised.

About five o'clock a large crowd, some of them a little the worse for liquor, marched up Main Street, loudly voicing their determination to raise the flags upon the private buildings. Near Z. C. M. I. they encountered Hamilton G. Park, the watchman of the institution, whom one individual in a blue uniform, covered with badges and brass buttons, seized, exclaiming, "I arrest you in the name of the Grand Army of the Republic!" The mob, on Mr. Park's refusing to raise the flag then floating from its midway position over the build-

ing, threatened to break in and do it themselves. The watchman saw that it was a critical moment; it was a holiday, the institution was closed, and he was in charge, responsible for the safety of the great mercantile depot and its valuable contents; in which, by the way, Gentiles as well as Mormons were interested as stock-holders. Should a mob break into or be permitted to enter the place, incalculable loss and damage might result. Opposed to this was the consideration of personal danger if he persisted in his refusal to comply with the mob's demand. Mr. Park fully sensed the situation. Planting himself squarely in the way of the crowd, he calmly but determinedly said: "Gentlemen, I am in charge of this institution. I did not place the flag where it is, nor can I change its present position unauthorized. General Eldredge is being consulted about the matter, and you must wait till word comes from him. Till he gives consent, none of you can enter this building, and the first man who attempts to break into it dies."

The men addressed believed his words and respected his warning. Some hot speeches were indulged in, but there was no attempt to commit trespass or violence. Messrs. William Jennings and Thomas G. Webber, the former vice-president, the latter secretary and treasurer of Z. C. M. I., now drove up, and the crowd parted to permit them to enter the store. A few minutes later the flag that had floated at half-mast over the building since sunrise glided to the top of the staff.

An effort was made to induce the watchman at the *Deseret News* office to follow this example, but that functionary stated that he had no authority to act in the matter, and the crowd did not attempt to enforce its demand.

The flag upon the Salt Lake Theater had been raised early in the day. The Anti-Mormon press credited Mr. William A. Rossiter with having caused this to be done by threatening to leave the service of that institution. Though a Mormon and a polygamist, then under bonds awaiting trial, he was lauded by the *Tribune* for his loyalty. He thus put aside the proffered crown:



SALT LAKE CITY,

July 6, 1885.

*Editor Deseret News:*

I notice a disposition to eulogize me and give me credit for action in a line for which I deserve none. I am credited also with having said that I would quit certain employ if certain things were not done. I take this method of assuring you and my friends that I do not deserve this praise, especially from that source. Respecting the flags being at half-mast, I feel exactly as all my co-religionists do—that it was a proper manifestation of our feeling upon the occasion. If Liberty is not dead, at least she lies bleeding.

W. A. ROSSITER.

The half-masting incident gave the Anti-Mormons a rare opportunity. "Mormon disloyalty" was one of their favorite themes, and next to "polygamy" their most effective war cry. They had long proclaimed the treasonable spirit of "the dominant church." Here at length was "positive proof," furnished by its members themselves. Would the Nation thus insulted, the Government thus outraged, any longer temporize with this growing evil? Would they refuse to stamp it out, not by the slow process of the law, but by the application of military force? The Associated Press agent, one of the *Tribune's* staff, telegraphed abroad the Anti-Mormon version of the affair, and created quite a commotion throughout the country. Said the *Tribune* editorially: "Let us hear no more of Mormon love for the Stars and Stripes."

They did hear more of it, however. The Mormon side of the question was presented by the *Deseret News*, which said:

The attempt to construe the incident into an insult to the Government, is supremely absurd as well as heartless and atrocious.

\* \* \* \* \*

The Mormon people have never at any time insulted the national ensign. They have sustained and upheld it under the most trying and extraordinary circumstances. When they were, like the Pilgrim Fathers, driven from their homes and sought a place where they could enjoy liberty of conscience, they planted the emblem of union and liberty in these mountains, and they will continue to sustain it.

Four years ago on Saturday, the nation's flag was at half-mast throughout the land. The people had been thrown into the depths of sorrow because one of the leading sons of the Republic [President Garfield] had been shot down by the bullet of an assassin. But the victim was not yet dead. The man who would have accused the country of insulting

the flag because it was then placed in a drooping position would have been treated as an idiot. The people of Utah joined in that universal grief. They are now sorrowful over the decadence of their liberties.

The *News* not only defended the half-masting of the flag; it deprecated the subsequent lowering and raising of it at the City Hall.

Monday evening, July 6th, the City Council met in special session to investigate the matter. A special committee, appointed to inquire into it, reported, next day, their findings, which were in accordance with the facts set forth.

The Anti-Mormons denounced "the apology" for the act as "worse than the original offense." At an indignation meeting held by them at the Federal Court room on the evening of July 11th, speeches were made and resolutions read in accordance with their feelings upon the subject. The orators of the occasion were P. L. Williams, General Maxwell, C. S. Varian, Colonel Agramonte and Colonel M. M. Kaighn. The last speaker, referring to the refusal of the commander at Fort Douglas to compel the raising of the flags, said he "would not condemn the coolness of General McCook," but quoted General Connor, the founder of that post, as having said that "if he had been there the flags would have been run to the top of the mast, or he would have poured hot shot into the streets of Salt Lake City." The resolutions adopted declared the half-masting of the flag "a deliberate expression of Mormon contempt and defiance of the law which that flag represents."

Another card remained to be played by the agitators. July 24th—Pioneer Day—was approaching, and a grand jubilee of Mormon Sunday Schools had been arranged to take place at the Tabernacle. The Anti-Mormons circulated the report that it was the intention of the Mormons to half-mast the Stars and Stripes on that occasion, and endeavored to convince, not only the troops of the regular army stationed in the West, but also the various organizations of the Grand Army of the Republic in the surrounding States and Territories, that their presence would then be necessary and desirable at Utah's capital.



*F. C. Griggs.*



So successful was this piece of fiction—for the Mormons had no such intention, and moreover the symbolism of a half-masted flag would have been utterly inappropriate to Pioneer Day—that General Howard, at Omaha, expressed to President Cleveland his fears of a general Mormon uprising. Thereupon the President ordered him “to keep all posts of the Western Platte Department in full strength and prepared for any emergency that might arise in Utah in the near future.”

Another phase of the scare, or conspiracy, was the issuance by the officers of several G. A. R. organizations—notably the Lincoln Post at Butte, Montana—of orders to their respective commands to be ready to proceed at short notice “armed, uniformed and equipped” to Salt Lake City, to prevent “the representatives of the twin relic of barbarism” from “repeating their treasonable actions of July 4th.”

The Mormons continued their preparations for the Sunday School jubilee, which their opponents were determined to magnify into a treasonable demonstration against the Government.

But now occurred a most singular denouement. Just one day before the proposed celebration, the news came flashing over the wires that General Grant was dead; he having passed away a few minutes after eight o'clock that morning, at Mt. McGregor, New York. The whole country, including Utah, Mormons and Gentiles, now bowed above the great soldier's bier, and everywhere—mark the turn of the situation!—flags were half-masted and covered with crape, to symbolize the sorrow of a nation.

None now thought it an insult to the Stars and Stripes to use it as an emblem of mourning, and—irony of fate!—it was Governor Murray, who had protested loudest against the Morimons showing their grief in that manner, who now issued a proclamation to the people of Utah recommending “that flags draped in mourning be placed on all public buildings, and as far as practicable on business houses, and on the houses of the people, and that they so remain until the burial.”

For some reason the Governor did not recommend that the

flags be half-masted, though he well knew they would be, and that this was a perfectly proper proceeding.

The Mormons joined in the general demonstration in honor of the departed hero, and draped and half-masted their flags on Pioneer Day with perfect impunity. Out of respect for the illustrious dead the Sunday School jubilee was abandoned. Imposing memorial services in honor of the deceased ex-President were held at Salt Lake City on the day of his funeral—the 8th of August.

The excitement in that city over the stirring incidents of Independence Day was duplicated on a smaller scale at Ogden, during the celebration of "The Fourth." It was due to a speech delivered by Apostle Moses Thatcher, who, after an eloquent oration from Judge Powers, and the reading of the Declaration of Independence, was invited to address the mixed assemblage of Mormons and non-Mormons. The Apostle in his address referred to the beautiful and sublime sentiments that had been uttered, proclaimed his opposition to a union of Church and State, and the bringing to bear upon legislative bodies of religious influence to shape legislation. He read extracts from a Congressional report made in March, 1830, by Colonel R. M. Johnson of Kentucky, chairman of the House Committee on Post Offices, and Post Roads, upon certain memorials and remonstrances presented to Congress by persons who thought laws should be enacted prohibiting the breaking of the Sabbath day. A few of the quoted sentences were these:

If the Almighty has set apart the first day of the week as a time which man is bound to keep holy \* \* \* would it not be more congenial to the precepts of Christians to appeal exclusively to the great Law-giver of the universe to aid them in making men better? \* \* \* When a man undertakes to be God's avenger he becomes a demon. \* \* \* The State has no more power to enforce the observance of Sunday upon moral or religious grounds, than it has to compel the citizen to be baptized, or to partake of the sacrament of the Lord's Supper. \* \* \* It is not for the Legislature to determine what is or what is not God's law. In this matter it can go no further than to protect all citizens, of whatever faith, in the peaceful exercise of their rights, leaving each to interpret God's law for himself \* \* \* without being amenable to any authority in the State, for either his conduct or his conclusions, so long as neither leads him to interfere with his fellowman in the exercise of like rights.

Apostle Thatcher used these utterances as a mete-wand to measure the action of Congress in passing, under a pressure of religious influence, the Edmunds Law; and portrayed in burning words the unhappy situation in Utah resulting from the enforcement of that measure. A paragraph or two of his eloquent plea for religious liberty will suffice to show its aim and spirit:

When the shot and shell of British tyrants tore up the sacred soil of Lexington and Bunker Hill, patriots planted the tree of Liberty in soil moistened with their blood.  
\* \* \* In the midst of the desolations of war, the tree of liberty, striking its roots deeply into mother earth, grew strong, bloomed and bore delicious and glorious fruit. If, while in careless hands, the codling moth has since marred its beauty and impaired its excellent quality, so that only windfalls come to us in Utah, with a worm in each core, the fault is neither in the tree nor in the manner of its planting, but rather with sleepy watchmen on the walls of freedom, who have permitted an enemy to tamper with the roots, foliage and flower.

Our revolutionary sires digged deeply and laid solidly the foundations of the greatest government on earth, making religious toleration the chief corner-stone. But some of their sons are fast drifting from the old moorings, while expedients and popular clamor override constitutional principles. \* \* \* What blessing, privilege or right extended by human hands, can the suffering majority in Utah rejoice over on this, our nation's anniversary? Can they rejoice in contemplating the remaining fragments of local government left them, which are less numerous than the crumbs that fell to Lazarus from the rich man's table? Can a hungry man's heart glow with gladness in listening to a recital of the bounteous feasts daily enjoyed by his rich and dominant brother? \* \* \*

In the midst of oppression patiently borne, it has been hoped that President Cleveland, having been elected on the pledge of a return to Jeffersonian doctrines, might afford citizens of Utah some relief, and that a Democratic administration would reaffirm the principles enunciated in the Declaration of Independence, under the inspiration of which the nation carved its way to glory and led to the adoption of the greatest charter of human liberty this world has ever known. \* \* \* If President Cleveland and those sent to rule and judge us have the moral courage to announce these principles, saying to the waves of popular clamor and religious prejudice, "thus far but no farther can ye come"—all men being equal before the law—our children for generations to come will make garlands with which to decorate their tombs, and keep their memory fresh and green in the heart. But if they choose not to do these things, we will still trust in God, while kissing the chastening rod, until the sons of Utah, faithful, true and loyal, shall stand on the back-bone of this American continent, and beneath the Stars and Stripes save and maintain, inviolate for all, the divinely inspired Constitution of this glorious land.

These words, full of fire and feeling, went straight to the Mormon heart, which said "Amen" to every sentiment of the speaker.

Very different was the effect upon the Anti-Mormons. Judge Powers was highly incensed, and months afterwards, referring to Moses Thatcher, is reported to have said that his name should "only be whispered by American citizens."

An interesting incident—the first of its kind—occurred on the day following the event last narrated. It was the visit to the Penitentiary of a party of Mormon Elders for the purpose of holding Sabbath services within its walls. To conduct religious meetings in that place had been for some time a more or less regular custom with ministers of other denominations; but it was not until after several prominent Mormons, victims of the crusade, had been incarcerated, and rules had been established requiring the attendance of all the prisoners at divine worship, that it was suggested that it would be no more than fair to have an occasional Mormon service at the institution. The U. S. Marshal willingly granted an application to that effect, and by conference with the ministers of other churches it was arranged that thereafter the first Sunday of each month should be "Mormon day" at the Penitentiary. All the services were non-sectarian.

The seven convicts for conscience' sake now within the walls of the Penitentiary were soon joined by others of the same class; among the first to swell their number being Francis A. Brown, Moroni Brown and Job Pingree, of Ogden. The first two were sentenced by Judge Powers on July 11th, each to pay a fine of three hundred dollars, and to suffer six months' imprisonment; the last-named, on July 13th, to pay a similar fine and be imprisoned for five months.\* All three refused to make any promise as to the future. Judge Powers had now entered into the crusade with all the zeal that characterized his brother magistrates. Said he to Elder Pingree: "While you say to me that you have tried to live within the law,

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\* Francis A. Brown, on being sentenced, said to the Judge: "If your Honor will make out our commitments and pay our fare, we will find the Penitentiary without the company of any of the marshals." The Judge replied that it was not in his power to grant such a request.



today you cannot tell me what you will do. I wish you could have done it, for this reason. If I could send forth today in this community, under suspension of sentence, such a man as Job Pingree, who by precept and example would show that the law must be obeyed, I should send forth a missionary of the court; I am sorry I cannot do it."

An incident imparting some variety to these proceedings—the imprisonment of men for acknowledging more than one wife according to a tenet of their religion—was the arrest at Salt Lake City, on the 15th of July, of one George Thorn, charged with the double crime of seduction and incest. The alleged victims, three in number, were his half-sister, a simple-minded widow, and her two daughters; all residents of Spanish Fork, Utah County. The arrest was made by City Marshal Phillips, who had received a dispatch from Provo requesting him to take Thorn into custody. Letters from him to two of the women, with their replies, secured by the officers, disclosed the fact that Thorn, after accomplishing the ruin of his sister and his niece, had instructed them how to make away with their unborn offspring, and had sent them drugs for that purpose. His letters were full of Anti-Mormon sentiments, in which he gloated over the imprisonment of such men as Angus M. Cannon, and the evident purpose of the Government to put a stop to the practice of plural marriage. He did not "want to belong to any such Church." In one letter he waxed indignant over the half-masting of the flag by the "cursed Mormons," whom he was "ready to help drive from the land."

The Mormons were not slow to utilize this incident—the worst of its kind that ever happened in Utah—and point out this depraved wretch—not as a typical crusader, but as a sample of a certain class of Mormon-haters who, steeped to the lips in moral filth, were posing as patriots and reformers. Thorn was tried before Judge Powers, convicted, and sentenced to ten years in the Penitentiary.

Mention has been made of the commitment to the Penitentiary of Elizabeth Ann Starkey, the plural wife of Charles L. White, for

refusing to answer before Commissioner McKay and the grand jury certain questions. This was in the latter part of June. On the 17th of August she was joined by Eliza Shafer, the plural wife of John W. Snell, who had been arrested on the 7th of that month, charged with unlawful cohabitation. At her husband's examination before the Commissioner, this witness was plied with questions similar to those which Elizabeth Starkey had refused to answer, and, as she took the same stand, was adjudged in contempt, fined twenty-five dollars and cast into prison. Habeas corpus proceedings were instituted in her behalf, the right of a U. S. Commissioner being disputed to punish for contempt when acting as an examining magistrate. Judge Zane sustained McKay's position, and sent the witness back to prison. On August 21st both the ladies named were released but immediately re-arrested and held in bonds as witnesses before the grand jury in September. A week later Commissioner McKay sentenced Elizabeth Starkey to another term of imprisonment; holding that the former sentence had not been satisfied. Proceedings in habeas corpus were this time successful, Judge Zane ordering that she be set at liberty. On September 15th, however, she and Eliza Shafer were both committed by Judge Zane for refusing to answer questions before the grand jury. They remained in prison, the former until October, when Mr. White's conviction resulted in her release; the latter two months longer, when, at the request of her husband, she answered the questions put to her and was given her freedom. Mr. Snell was convicted, and sent to the Penitentiary.

It was about this time that three prominent Federal officials were made the victims of an outrage as indecent as it was indefensible, and which, though its perpetrators were never discovered, was immediately charged to the Mormons by their adversaries. The three officials were U. S. Attorney Dickson, Assistant U. S. Attorney Varian and U. S. Commissioner McKay. The outrage was not in the form of a personal assault, but consisted of acts of vandalism, of a most disgusting character, committed upon the premises of these gentlemen. Between the previous midnight and day-break of

September 13, 1885, their residences were visited by certain individuals, armed with improvised hand grenades,—glass jars filled with filth, which were thrown through the windows or shattered against the walls of the dwellings, alarming the sleeping inmates, damaging furniture and other property to some extent, but inflicting no personal injury. Mr. Dickson's home in the Seventh Ward was the first thus assailed. Thence the marauders seemed to have proceeded to Mr. Varian's residence in Reggel's Row, and thence to Mr. McKay's, in the Twelfth Ward. Mr. Varian was absent, and his wife was sitting up with a sick child. Messrs. Dickson and McKay were at home, and were roused from slumber by the crash of the breaking jars.

As a matter of course the affair created a sensation, and efforts were made to magnify it far beyond its due proportions. It was but natural that the three officials, knowing their unpopularity with the Mormons, should hold them responsible for the deed; and that they would be accused of it must have been foreseen by the perpetrators. It was precisely for this reason that the Mormons, who denounced the outrage as vehemently and sincerely as did the Gentiles, resented the imputation of guilt on the part of any of their number. It was difficult for them to believe, after all the forbearance they had shown towards those whom they deemed their oppressors, that they had anyone among them so unwise—to put it no stronger—as to gratify malice, personal or communal, under circumstances that could not fail to cast odium upon the whole people and injure instead of benefit their cause. That they had something to lose and their opponents something to gain by the outrage must be admitted.\*

As stated, its authors were never discovered. The police were unsuccessful in ferreting out their identity. The Associated Press agent, in his telegraphed account of the affair, said that "parties of Mormons" did the deed, but was careless enough to add—"No clue to the perpetrators."


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\*The Salt Lake *Tribune* said: "We wonder how much more it will require to give those in authority at Washington a clear idea of the spirit which rules here, and cause them to take effective steps to have the laws enforced and respected in this region."

## CHAPTER XV.

1885.

THE CRUSADE CONTINUED—“SEGREGATION” INAUGURATED—THE UNITED STATES ATTORNEY’S METHOD OF MULTIPLYING INDICTMENTS—JUDGE ZANE SANCTIONS THE PROCEDURE—THE GOWANS CASE—JUDGE POWERS SECONDS THE ACTION OF THE CHIEF JUSTICE—BISHOP SHARP PROMISES TO OBEY THE LAW—HIS EXAMPLE FOLLOWED BY OTHERS—BISHOP CLAWSON GOES TO PRISON—THE ROSSITER CASE—JOHN NICHOLSON’S ATTITUDE—OTHER POLYGAMOUS CASES—GRAND JURORS CLAYTON, MORITZ AND DAVIS DISMISSED FOR REFUSING TO SUSTAIN “SEGREGATION”—FIRST RELEASES OF POLYGAMISTS FROM THE UTAH PENITENTIARY—CONVICTION AND DISBARMENT OF AURELIUS MINER—FURTHER ANTI-MORMON LEGISLATION RECOMMENDED.

 THREE days after the assault upon the homes of Messrs. Dickson, Varian and McKay, an incident occurred at Salt Lake City which betokened another radical change in the policy of the Federal courts with reference to polygamous cases. It was the inauguration of the procedure known as “segregation.”

The attitude of most of the Elders arraigned for violations of the Edmunds Law, in preferring fine and imprisonment to freedom conditioned on obedience to a statute aimed at a principle of their religion, had finally convinced the courts and all connected with the crusade that in ordaining the destruction of the plural marriage system of the Latter-day Saints, they had set themselves a much harder task than at first imagined. The administrators of the law, like the enactors of the law, had not given the Mormons sufficient credit for sincerity. They had imputed improper motives to the men who practiced polygamy, and had supposed that if threatened with penalties, such as those provided by Congress in the Edmunds Law, they would readily yield their convictions, real or pretended, sever their relations with their plural wives, and set them and their children adrift. They had discovered that this was an error.



Henry S. Gowton



A year had passed since the beginning of systematic operations against polygamy; the prisons were rapidly filling with polygamous convicts, and the United States Treasury was steadily swelling from the accretions of fines and costs collected in such cases; but the end sought seemed as far off as ever. Something must be done—unless Congress could be induced to legislate further against the Mormons—to make existing laws against them more effective. So reasoned the crusaders, or the officials charged with the enforcement of the Edmunds Law. It was this reasoning that brought forth “segregation.”

The reader will remember that Judge Zane, in sentencing Parley P. Pratt for unlawful cohabitation, virtually gave vent to an expression of regret that the law punishing that offense did not provide a heavier penalty. As if suiting the action to the word, he pronounced a severer sentence upon this defendant than the law allowed; adding to the usual penalty of imprisonment for six months, the words “at hard labor,” for which there was no warrant in law. On being reminded of this, however, his Honor promptly rescinded that portion of his decree.

But the feeling responsible for the original act remained, and the advisability of asking Congress for legislation that would satisfy that feeling began to be agitated. During the following winter, the bill from which was framed the Edmunds-Tucker Act was introduced into the National Legislature. Meantime, however, the fertile brain of U. S. Attorney Dickson, or some one equally ingenious whose idea he adopted, brought forth an expedient that in every way answered the purpose of an act of Congress, and which, until declared unconstitutional by the Supreme Court of the United States, bid fair to be used against the Mormons with terrible effect.

The U. S. Attorney advanced the idea that while the maximum legal penalty for unlawful cohabitation—the “holding out” of two or more women as wives—was a fine of three hundred dollars and imprisonment for six months, there was nothing to prevent the dividing and subdividing of the period of the offense into “times and

times and half-times;" each fragment broken off or segregated to be covered by a separate indictment.

The astounding theory that such a thing was possible under the law, was introduced into court on the 16th of September, 1885. On that day the grand jury of the Third Judicial District came into the presence of Chief Justice Zane and desired instruction upon a certain point which they requested Mr. Dickson to lay before the Court. That gentleman then stated that a case was being investigated in which a man was charged with unlawful cohabitation, and the evidence went to show that since February, 1883, he had lived a portion of each week with each wife. Mr. Dickson had informed the grand jury that it might, under those circumstances, present a separate indictment for each month or week of the entire period, and had suggested the propriety of finding an indictment for each of the three years, 1883, 1884 and 1885. Some of the jurors were in doubt as to the legality of such a proceeding and they had come into court for instructions.

Judge Zane's response was that an indictment might be found for any portion of time within the three years during which the offense was shown to have been committed, whether that portion of time was a year, a month, or a week.

To say that the general public was surprised at this ruling, is to state the fact very mildly. What the Mormon press styled "judicial somersaults" had become so common in Utah as to be expected almost daily; but that anything so remarkable as the "segregation" doctrine should be advanced, was a matter of astonishment. According to the theory put forth, a man, for acknowledging, during a period of three years, more than one wife—that being the latest definition of unlawful cohabitation—could be indicted either three times, thirty-six times, or one hundred and fifty-six times; once for each year, month or week of the triennial term. He could be fined nearly \$50,000, and imprisoned for a life-time; and that for a mere misdemeanor which Congress had made punishable by a fine not to exceed three hundred dollars and a term of imprisonment not to exceed six months.



Strange to say, this extraordinary doctrine was pronounced "good law" by some of the most prominent attorneys of Salt Lake City, whose opinions, elicited by newspaper interviewers, or volunteered in articles written by themselves, were published in the local prints.

The "segregation" theory was at once put into practice, the first victim of its operation being Elder Hugh S. Gowans, President of the Tooele Stake of Zion. He, with another Elder—John Bowen—had been arrested on the 16th of July at Tooele City, by Deputy Marshals Greenman and Collin. Elder Gowans was taken before U. S. Commissioner McKay at Salt Lake City, and bound over in the sum of \$1500 to await the action of the grand jury. He was charged with unlawful cohabitation. His was probably the case that the grand jury were considering, when, on the 16th of September, they filed into court and received instructions as to their power to multiply indictments by the process of "segregation." Elder Gowans was indicted three times for one offense, and on the 23rd of September was arraigned in the District Court to plead to the triple indictment. His plea was not guilty. He was placed under bonds of three thousand dollars—one thousand dollars for each indictment—pending his time of trial.

The division of the period of a polygamist's offense into years, months, or weeks, as suggested by Judge Zane, left little to be added in the way of innovation by his brothers upon the bench. Judge Powers, however, was not to be outdone by the Chief Justice. His conservatism by this time had evaporated, and he was prepared to out-Zane Zane, or out-Dickson Dickson, in furthering the cause of the crusade. Instructing, on the 23rd of September, the grand jury of the First District, respecting indictments for unlawful cohabitation, Judge Powers said:

An indictment may be found against a man guilty of cohabitation, for every day, or other distinct interval of time, during which he offends. Each day that a man cohabits with more than one woman, as I have defined the word "cohabit" [the "holding out" practice] is a distinct and separate violation of the law, and he is liable for punishment for each separate offense.

Almost cruel was the satire with which the Mormon press now charged home upon the Federal Judges; especially his Honor of the First District. Said the *Deseret News*, in relation to Judge Powers and the instructions given by him to his grand jury:

Doubtless this ambition to eclipse all other judicial competitors is partly due to the fact that his associates are Republicans while he is a Democrat. He evidently proposes to show that in the arena of Anti-Mormon political jugglery a representative of the party out of power will appear as a farthing rush-light compared with a Democratic star of the first magnitude. His Honor of the Third District gave him the opportunity and he was not slow to embrace it.

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In exhibiting the segregating system the Chief Justice announced that the time a man had lived and cohabited with more women than one as wives could be divided into years, months or weeks, and separate bills of indictment be found for each fragment of time. Here was the opportunity of Judge Powers to show his Anti-Mormon proclivity, besides a predisposition for detail that is not far from the verge of the remarkable. He simply multiplied the Zane possibilities \* \* \* by seven, bringing down the divisions to days. This was a master-stroke, because the maximum aggregate penalty under Judge Zane's divisional process \* \* \* would amount to imprisonment for only seventy-eight years, and a fine of \$46,800. According to Powers the obnoxious Mormon could be sentenced to an aggregated term of five hundred forty-seven years and six months, and compelled to pay a fine of \$328,400. If he happened to be impecunious he could be made to remain in prison for ninety-one years and three months longer, in order to satisfy the "poor convict act." \* \* \* Such lengthy periods in prison would certainly be conducive to fatigue, and be a powerful test of endurance.

There is one point that appears to have escaped the observation of the two astute judges. \* \* \* Suppose that a Latter-day Saint, subjected to either the seventy-eight years' penalty, or that of five hundred forty-seven years and six months, should be so fortunate as to shuffle off his mortal coil before the expiration of the term. Cannot these noble and ingenious men devise some scheme under the stretching statute by which such an escape from the rigors of the law could be met? Why not extend its penalties to the other life?

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But if Judge Powers has seized an opportunity to excel, why should not the remaining occupant of the bench in Utah [Judge Boreman] stand, circus-fashion, upon the judicial shoulders of the other two, and instruct the grand jury of his district in regard to segregating for Anti-Mormon purposes a given time into hours, and indict accordingly?

We have heretofore shown that the penalty for unlawful cohabitation can be manipulated very much as a tailor fits a customer with a suit of clothes—according to the size of the victim. The case of President Hugh S. Gowans suggests another idea connected with this process of enlargement or contraction. He evidently received one indictment for the alleged offense, and two for being President of a Stake.

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If the law was intended to be so elaborately and viciously applied as it is now construed, why was not the discovery made sooner? \* \* \* The action of the leading authorities of the Church in retiring for a season from public view has been reflected upon. Their enemies and a few pretended friends have been anxious for them to come out and "face the music." Baits have even been thrown out to induce them to step into the snare. \* \* \* If those pretending to be on the friendly side, who have questioned the consistency or propriety of the course taken by the leaders of the Church, do not feel the reverse of costly, they certainly should. Developments are constantly occurring that ought to show the dullest minds that the amount of consideration or justice they would receive at the hands of the courts of Utah could be injected into a person's eye without causing him to wink.

The tone of the Anti-Mormon prints is in beautiful harmony with the judiciary. Some of their contributors are local legal luminaries. To find such writers sustaining a construction of law that places a power in the hands of a grand jury to jeopardize the liberty of accused persons to any degree they may desire, lifts them to the summit of combined absurdity and animus. \* \* \* It is held that good sense and good law are closely related. But law of that kind and sensible conditions are as completely divorced as Utah judges demand that Mormons shall be from their plural wives.

That the *News* was right, and the courts and lawyers wrong, in their respective views upon the subject of "segregation," was eventually proved. The Supreme Court of the United States decided against it in one of the most notable cases that arose during that eventful period. Of this—the Snow case—more hereafter.

The motives actuating the Federal judges and their coterie in inaugurating the extraordinary procedure mentioned—which, by the way, was never carried to the extreme lengths satirized by the *Deseret News*—have already been briefly indicated. That "segregation" was intended to strike terror to the Mormon heart, and compel the Church to succumb to what some of its members were convinced was the inevitable, is beyond question. A desire to end the crusade was doubtless the real reason for the adoption of such a policy. Hot and bitter as were the feelings that then prevailed, faith in human nature, in American manhood, constrains one to repel the thought that a wish to gloat over human suffering was the mainspring of such a movement. The courts and their officers—whatever angry emotions ruled them at times—certainly stood upon higher ground. A stern sense of duty, a determination to conquer those whom they considered obstinate law-breakers, was their predominant motive

While cherishing no affection for Mormons—such as Hamlet is represented as feeling for the Queen Mother—these officials were more or less *en rapport* with the philosophy of the Melancholy Dane:

I must be cruel in order to be kind.

Thus bad begins, and worse remains behind.

As the first line of the couplet sounds the keynote of the policy pursued by the better element among the crusaders, so the second line accurately describes some of the methods by which they sought to attain their ends.

In the interim between the original announcement, by Judge Zane, and the supplemental announcement, by Judge Powers, of the "segregation" policy, an event occurred that produced a greater sensation than either. It was the stand taken by Bishop John Sharp, one of the most prominent men of the Mormon Church, who, on Friday, the 18th of September, was arraigned in the Third District Court, charged with unlawful cohabitation. Bishop Sharp was not one of the general authorities of the Church, but one of a score or more of Bishops presiding severally over the ecclesiastical Wards of Salt Lake City. Socially and financially, however, he was one of the foremost characters in the community. Nor was this entirely due to his wealth, to the influence that it commanded, or to the ability by which it had been acquired. He was the possessor of sterling qualities, for which he was widely honored and esteemed. He enjoyed the confidence of the Church leaders, with whom he often sat in council on temporal matters. He was the railroad king of Utah; a director of the Union Pacific Railway, a director of Z. C. M. I. and of the Deseret National Bank; in short, a commercial and financial pillar of the commonwealth. Like most of the leading Mormons, he was a polygamist, and had been included in the list of notables singled out for prosecution under the Edmunds Law. Proceedings against him had begun and were pending, when on the date given, he went before Chief Justice Zane, pleaded guilty to the charge preferred, promised to obey the law in future, and, after being fined three hundred dollars, was permitted to go free.

A brief dialogue took place in court on the occasion of Bishop Sharp's arraignment. His former plea of not guilty having been withdrawn, and a plea of guilty entered, he presented, by his attorney and son-in-law, Mr. P. L. Williams, the following statement to the court:

I hold myself amenable to the laws of my country, and in whatever degree I may have infringed upon the provisions thereof, am ready to meet the penalty.

I am the husband of more than one living wife, and the father of a number of children by each of them. The most of my children have arrived at their majority.

I respectfully submit to this court that the marriage covenant that I entered into with each of my wives was made at a time when there existed no law upon the statute books which made an offense of the plural marriage relations as contemplated in our religion, and that we entered those marriage relations and made those marriage covenants with the most profound conviction that we were obeying the law of God. Furthermore, from the time we made those sacred covenants to the present, we have sustained the most devout reverence for the sanctity and divine origin of that law, and we have not designedly placed ourselves in conflict with any of the laws of our adopted country in embracing this cardinal doctrine of our religion.

Your Honor can readily conceive my discomfiture and that of my wives when we learned that Congress had enacted what is known as the Edmunds Law, which not only subjected us to political disabilities, but also forbade us the right to live together as we had done for so many years. By this new law we were made transgressors and deprived of many of the privileges of our citizenship; and, while I consider this a harsh law, yet it does not, as I understand it, nor as I understand it to be construed by the courts, require that I shall disown the mothers of my children as my wives, or abandon them to the charity of an unsympathizing world.

I expect to remain under the political disabilities placed upon me, but I have so arranged my family relations as to conform to the requirements of the law, and I am now living in harmony with its provisions in relation to cohabitation, as construed by this Court and the Supreme Court of the Territory; and it is my intention to do so in the future until an overruling Providence shall decree greater religious toleration in the land.

At the conclusion of the reading, Judge Zane, addressing the defendant, said:

“Do you wish to say anything further?”

BISHOP SHARP.—“Nothing, I believe, sir.”

COURT.—“I understand from your statement, Mr. Sharp, that you propose to obey the law of the land as interpreted by the courts, and that you do not propose to advise other people to violate it?”

The defendant acquiesced.

COURT.—“It is gratifying, of course, to the court and to all law-abiding citizens, that a man of as much influence in the community and the church to which he belongs, as you have, should take this stand. The example, I trust, will have an effect upon society in inducing others who are disposed to violate this law by bigamy\* or unlawful cohabitation, to submit to the law. You are ready to have the judgment of the court pronounced against you?”

BISHOP SHARP.—“Yes, sir.”

COURT.—“In view of the statements which you have made, I am disposed to exercise the discretion which the law gives me, so as not to impose any imprisonment. Your example today, I think, will have a better effect on society than any imprisonment the court could impose. \* \* \* The law authorizes the court to impose a fine of three hundred dollars and imprisonment for six months. I will simply impose a fine of three hundred dollars and costs.”

Without dwelling upon the sensation caused by this event, it is sufficient to say that it provoked many unfavorable comments from the Mormon press and people; the great majority, who loved and respected the Bishop, deploring and deprecating his act, and only a small minority defending it. The same sentiments felt and expressed toward Elder Arnold and those who followed in his footsteps, now prevailed in relation to Bishop Sharp, with such enhancement as his greater prominence gave. The Gentiles, of course, thought that he had done exactly right.

As apparent from Judge Zane's remarks, when pronouncing judgment upon the Bishop, it was the defendant's example that was chiefly valued by the anti-polygamists; an example which, it was hoped, would be followed by all the Mormon leaders. It was the

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\* The anti-polygamy law of 1862 classed polygamy as bigamy, and the Edmunds Law perpetuated the terms as synonyms. The Mormons, however, always drew a sharp distinction between them: polygamy, as practiced by the Latter-day Saints, involving no element of deception, but being entered into with the consent of all parties concerned, and practiced as a sacred principle.

example that the Mormons also took into account, in passing judgment upon their co-religionist, and it was because of the possible effect of that example upon the Mormon cause that many found it difficult to excuse him; to extend that consideration to which his friends deemed him entitled. It is a fact that he was in very poor health at this time; in no condition to endure the rigors of Penitentiary life. For this reason his course was palliated. Moreover, it was evident that Bishop Sharp had no intention to cast off his wives, disown his children, or renounce his religion; and he never did. Neither did Orson P. Arnold, who, as previously stated, afterwards went to prison for failing to "obey the law." In these cases, and in all similar ones where "promises to obey" were given, it was the examples set, the effect of which was to weaken the cause of the Church and strengthen the hands of the crusaders, that were mostly criticised and condemned.

Comparatively few, however, were influenced by those examples. The great majority of the Elders arraigned for sentence, who with a word could have procured their release, refused to speak that word; preferring fine and imprisonment to freedom purchased by an agreement to "come within the law," or, as most of them viewed it, to violate their covenants. None of those who made the required "promise" left the Church on account of it. John Sharp resigned his office of Bishop of the Twentieth Ward, but it was at the request of the Presidency of the Stake, who thought it advisable under the circumstances, to relieve him of that responsibility. No further action was taken or contemplated in his case, and when he died, a few years later, the principal men of the Church attended his funeral and otherwise manifested their esteem for their old-time associate.

During September, 1885, two more polygamists were punished for unlawful cohabitation and for refusing to promise to "come within the law." One of these was Bishop H. B. Clawson, of Salt Lake City; the other Elder John Lang, of Beaver. Both were sentenced on the same day—the 29th—the former by Judge Zane, the latter by Judge Boreman. Elder Lang was fined two hundred dollars

and sent to the Penitentiary for three months. Bishop Clawson's sentence was to the full extent of the law.

Having changed his plea from not guilty to guilty, the Bishop was asked if he had anything further to say. He took advantage of this opportunity to define his position. He stated that he had been a Latter-day Saint for forty-five years, and for over thirty years had lived in his present marriage relations. These were sacred to him, and when he and his wives entered into them they all believed they were doing exactly what they ought to do. He had married his wives when they were young, and had made the most solemn covenants with them, and now, when streaks of grey showed in their hair, and they had children, and some of those children were married and had children, he could not say that he would cast them off. By so doing, he would not only be false to his covenants, but would receive the scorn of his wives, his children and his co-religionists. He would suffer social ostracism. "To me," said the Bishop in conclusion, "there are only two courses. One is a prison and honor, the other is liberty and dishonor."

Judge Zane was severe in his strictures upon Bishop Clawson's remarks. In answer to the plea that his first polygamous relations were entered into at a period prior to the enactment of laws against plural marriage, the Judge stated that there never was a time when polygamy was lawful in the United States, and that he believed it was not recognized by the laws of Mexico, of which Utah was once a part. When those relations were formed, therefore, they were void. The second wife, in the eye of the law, was nothing more than a concubine, and the children born of those relations were bastards. The Judge, after accusing the defendant of cowardice for refusing to make the concession desired of him, sentenced him to pay a fine of three hundred dollars and costs, and to be imprisoned in the Penitentiary for six months.

The Court's comments in this case created considerable indignation in Mormon quarters. Not only were the epithets "concubines" and "bastards," as applied to plural wives and their children, hotly



resented, but also the imputation of cowardice to this defendant. The Mormon press wanted to know which was the more cowardly—to go to prison, as Bishop Clawson had done, or to assail him from the bench, as the Court had done, when he stood a prisoner at the bar, powerless to protect himself.

On the day that Bishop Clawson was sentenced, the cases against Truman Osborn Angell, Jr., and Septimus W. Sears were disposed of by Judge Zane. These defendants promised to obey the law, and were set free after being fined, Mr. Angell one hundred and fifty dollars and costs, Mr. Sears three hundred dollars and costs. The difference in the fines, the Court stated, was due to a difference in the financial condition of the two gentlemen.

The month of October was prolific of convictions on the going charges. No less than fifteen persons were sent to the Penitentiary by Judge Zane, for infractions of the Edmunds Law. Little or nothing was done during that time in the other districts, where Judges Powers and Boreman seemed to be "resting upon their oars," awaiting perhaps the moral effect of proceedings at the Territorial capital. Moreover, there were fewer polygamists in their jurisdictions than in that of the Chief Justice, and consequently less material out of which to manufacture cases of this kind. Another reason was that funds were getting low with the crusaders, and, in the outer districts especially, they were without the means to prosecute any but the more important cases that might arise.

Matters were also more or less quiescent in Arizona, where the reaction from the rigor of the crusade was first to be felt.

In Idaho, where the Mormons were more numerous and consequently more of a political factor than in Arizona, the courts and their minions were still busy with polygamous prosecutions; that is, prosecutions for living in polygamy. Cases of contracting polygamous marriages, in any of the courts of the three Territories, were rare; but cases of unlawful cohabitation—the acknowledging of a plurality of wives—were multitudinous.

Judge Zane pronounced sentence upon the following named

defendants about this time: John Daynes, Edward Brain, John Nicholson, Isaac Groo, Charles Seal, Alfred Best, David E. Davis, Andrew Cooley, Charles L. White, Aurelius Miner, Andrew Smith, William D. Newsom, William A. Rossiter, George Romney, Emil O. Olsen and one or two others.

John Daynes promised to obey the law and was let off with a fine of one hundred and fifty dollars. The Court permitted him to choose which one of his two wives he would live with thereafter. All the others refused to make the promise and were punished to the full extent of the law. The Newsom case was the only case of polygamy among them. The other defendants were convicted of unlawful cohabitation. Newsom suffered for the junior as well as the senior offense.

The trial of William A. Rossiter ended on the 11th of October; the same day with the Daynes case. The evidence was of the flimsiest character, but the defendant was convicted. After this trial, a prominent Gentile attorney remarked that he saw no use of a Mormon making a legal fight, as he was convinced that to accuse was to convict. It transpired that Mr. Rossiter had two wives, but the public felt that he was convicted more by rumor than by evidence. He received sentence on the 10th of October.

The case against John Nicholson, the acting editor of the *Deseret News*, came up on the third day of that month. The jury having been empaneled, and the indictment read to them, Mr. Nicholson waived his right as a defendant and was sworn, at his own request, as a witness for the prosecution. He was the first to take this course, and did it to save his family the pain of being dragged into court to testify against him. The following brief dialogue constituted the trial in his case:

MR. VARIAN.—“Mr. Nicholson, are you the gentleman named in this indictment you have heard read?”

MR. NICHOLSON.—“Yes.”

“Are you acquainted with the ladies named therein, Susannah Keep Nicholson and Miranda Cutler, sometimes known as Miranda Cutler Nicholson?”

“Yes.”

“What relation do you bear to Susannah Nicholson?”

“She is my wife.”

“And what relation do you bear, if any, to Miranda Nicholson?”

“She is my wife also.”

“During the periods mentioned, namely, between July 1, 1883, and March 1, 1885, state whether you have lived with both of these ladies as your wives.”

“I have.”

“In the City of Salt Lake, County of Salt Lake, and Territory of Utah?”

“Yes.”

“And, of course, during that time you have acknowledged both of them to be your wives?”

“I have.”

MR. VARIAN (to the Court).—“That is all, your Honor.”

The case was submitted without argument, and the Judge having charged the jury, they retired, but returned in about five minutes with a verdict of “Guilty.”

On the 13th of October Mr. Nicholson stood up for sentence. That same morning Messrs. Andrew Smith and Emil O. Olsen, convicted of unlawful cohabitation—the former by following Mr. Nicholson’s example and the latter by pleading guilty—had also received their sentence of fine and imprisonment. These proceedings over, the Judge addressed Mr. Nicholson and asked him if he had anything to say why judgment should not be pronounced against him.

The defendant faced a somewhat embarrassing situation. In disposing of Edward Brain’s case on the 2nd of October, Judge Zane, after the defendant had addressed the Court and received sentence, had manifested considerable irritation, remarking at the close of the proceedings, “I am tired of listening to these long hypocritical cants.

\* \* I hope the defendants when they come in hereafter will be a little more brief; if they have anything to say, let them say it briefly.”

Acting on this hint, such men as Isaac Groo, Alfred Best, David E. Davis, Charles Seal and Andrew Cooley, arraigned for sentence on the 5th of October, had simply replied to the Judge's queries as to whether they had anything to say and whether they would obey the law, that they did not care to make any statement. The same course had been taken by Charles L. White and John Connelly, sentenced October 6th; by William A. Rossiter and George Romney, sentenced on the 10th; and by Messrs. Smith and Olsen, who received their sentences just prior to Mr. Nicholson. This defendant, however, desired to say something to the Court, and proceeded to say it.

He stated that he had been connected with the Church of Jesus Christ of Latter-day Saints for about a quarter of a century, and had begun to practice the principle of plural marriage in 1871. He had not the slightest idea at that time that he was infringing upon any constitutional law. In proof of this he said that when the Reynolds case was brought forward to test the constitutionality of the Anti-polygamy Act of 1862 he had gone upon the witness stand at the request of the defendant in that case, and testified in order that a conviction might be had. Years afterwards, the Edmunds Law was enacted, and this made the present defendant's conduct criminal—*malum prohibitum*, though not *malum in se*. He had a large family, attached to him and he to them by the tenderest ties, which no law could sever. The Edmunds Act required him to discard a portion of his family. This placed him in a very painful position. His second wife, who would have been the principal witness in this case had he not testified against himself, had told him that she would decline to testify or do anything that would send him to prison. After such an exhibition of devotion on her part, he could not think of cutting her adrift; the bare idea was revolting to his soul. The speaker stated that religion with him was not a mere sentiment as it was with some people; it embodied action, since faith without works was dead. The claim that plural marriage threatened the existence of monogamy was not tenable, if one might judge from the attitude of the Court and of the Nation, and the assaults made upon polygamy.

Some might deem plural marriage adulterous ; the speaker, however, thought that he and others who practiced it were in excellent company, for it was practiced by Moses, the enunciator, under God, of the principles that constitute the foundation of modern jurisprudence. Mr. Nicholson's concluding words were: "Not to weary the Court, I will simply say, that my purpose is fixed and I hope unalterable. It is, that I shall stand by my allegiance to God, fidelity to my family, and what I conceive to be my duty to the Constitution of the country, which guarantees the fullest religious liberty to the citizen. I thank your Honor for bearing with me, and \* \* I am now prepared to receive the sentence of the Court."

During the delivery of this address the most intense and respectful silence prevailed, and the Judge, though not converted to the defendant's views, was evidently convinced that the one who had so calmly and fearlessly confronted him was a sincere and resolute man. In his response he credited Mr. Nicholson with having "candidly and honestly" expressed his feelings and convictions, and gave it as his opinion that he was "more sincere" than many of his brethren. The Judge then spoke at length and with much warmth in reply to the various arguments advanced by the defendant, and closed by declaring with considerable severity: "This law will go on and grind you and your institutions to powder." He then sentenced the defendant to the full extent of the law, and the latter, after bidding farewell to his family and friends, joined his imprisoned brethren in the Penitentiary.

A few days before the event just related, an incident occurred that served to ventilate pretty thoroughly the subject of "segregation." As seen, the bare announcement of it had provoked much discussion; the Mormons denouncing it as absurd, illegal and cruel ;\*

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\* The subject was dwelt upon in an epistle from Presidents John Taylor and George Q. Cannon, read to the Latter-day Saints in General Conference at Logan on the 6th of October. The Apostles in attendance were Erastus Snow, Franklin D. Richards, Moses Thatcher, Francis M. Lyman, John Henry Smith, Heber J. Grant and John W. Taylor, some of whom stood in jeopardy. Apostle Thatcher read the epistle on the 7th of October.

the Gentiles, or many of them, including attorneys and editors, defending it as "good law."

At 11:30 a. m. on the 9th of October, the grand jury of the Third District Court filed into the presence of Chief Justice Zane, and by U. S. Commissioner McKay—who, when not acting as an examining magistrate, assisted the U. S. Attorney in his labors—presented a matter upon which the grand jury was divided. At least one member of that body claimed the right to exercise his own discretion in the matter of finding indictments, and this juror objected to returning more than one indictment for unlawful cohabitation in a given period.

Judge Zane asked for the name of the juror, and was informed that it was Newel W. Clayton. The latter having assented to the statement, Mr. McKay proceeded. He said that this juror assumed to say whether or not the law was correctly laid down by the Court; that the finding of more than one indictment in these cases was unconstitutional; that the law of 1862 had fixed the maximum penalty for polygamy; that the Edmunds Law showed it to be the intention of Congress to fix the utmost punishment for unlawful cohabitation at six months' imprisonment and a fine of three hundred dollars; and that to find two or more indictments against a man for this, the lesser offense, was to render him liable to punishment for it to a greater extent than for polygamy. For these reasons—that the juror claimed that he was not bound by the instructions of the Court in the matter of finding indictments, and that he refused to find more than one indictment for unlawful cohabitation in a certain period—Mr. McKay held that he was incompetent, and asked that he be dismissed.

He then stated that there was another juror who took the same ground with Mr. Clayton as to the finding of more than one indictment in a certain period, and named Jacob Moritz as that man. McKay said that he was informed there were others who held the same views, and he asked that they all be dismissed as incompetent.

At this point, J. W. Davis, one of the grand jury, announced that he was one to whom these remarks would apply.

The Judge now proceeded to interrogate the recalcitrants, beginning with Mr. Clayton. That gentleman stated that he believed it unconstitutional to indict more than once for the same offense. The Constitution provided that excessive fines and unusual penalties should not be imposed. He would vote for indictment where the evidence warranted it, but would not go back and find an indictment for every week, day, or minute. Though the evidence should show that a defendant had been living in unlawful cohabitation for three years, he would find but one indictment for the whole period.

Messrs. Moritz and Davis expressed similar opinions, and added that where parties had been indicted, tried and convicted, they thought they should be given a chance, after coming out of prison, to see what they would do. Then, if they did not live within the law, they were ready to indict them again.

It was this part of the proceedings that gave the public an inkling of what the grand jury was about. It was known that members of the Cannon and Musser families had been summoned before that body, and suspicion was rife that the purpose was to re-indict the imprisoned heads of these households. Here was a confirmation. It afterwards transpired that it had actually been proposed to again indict Angus M. Cannon and A. Milton Musser for unlawful cohabitation, on the ground that between the times of their former indictment and their incarceration in the Penitentiary they had continued to acknowledge their plural wives. This shows to what desperate straits the crusaders were reduced, and to what extreme lengths they were prepared to go, in the process of crushing out polygamy.

Judge Zane, after the three grand jurors had expressed themselves as stated, inquired of their associates if any of them held similar opinions to those entertained by the trio. Each answered in the negative. The Judge then turned upon the three and proceeded to excoriate them as follows:

“Mr. Moritz, Mr. Davis and Mr. Clayton: I am surprised, gen-

lemen, after you took the oath you did—that you would investigate and inquire into all the matters that were brought before you, and whenever the evidence was sufficient you would find the truth and nothing but the truth: that you would not be influenced by fear, favor or affection, or by any reward or promise or hope thereof, but in all your presentments would present the truth, the whole truth and nothing but the truth,—I am surprised that you will state you will not do it. Your statement is to that effect.”

MR. CLAYTON.—“I don’t understand it that way.”

COURT.—“Men must be careful when they take oaths”—

MR. MORITZ.—“We had no evidence. We didn’t take a vote on it.”

COURT.—“But you had no right to state that you would not do it. You cannot trifle with your consciences like that in this court. It is astonishing that men have not more regard for their oaths than that. Where the evidence is sufficient, you have no discretion whatever. If it is sufficient to indict, you must indict. If it is not sufficient, you cannot indict. You have no more discretion than this Court has when a case is submitted to it. \* \* \* You have no right to say you will not indict, though the evidence may be sufficient. You have no right to say a law is unconstitutional, or wrong, after the Court charges you that it is the law. Gentlemen, you are excused as unworthy to sit on a grand jury. Next time you come before the Court and are questioned as you were in this case, as members of the grand jury, answer frankly and honestly, and if you go on the grand jury you must be governed by your oaths. Mr. Moritz, Mr. Davis and Mr. Clayton, you may retire; you are discharged from this grand jury.”

Later in the day an open venire was issued—the jury list being exhausted—and upon the return of the writ, which was for six names, three of them, J. S. Scott, J. T. Clasbey and A. Gebhardt were chosen to fill the vacancies caused by the dismissal of the three grand jurors who had refused to become a portion of the terrible machinery designed to make good the threat that the Edmunds Law



would "grind the Mormons and their institutions to powder." Of those confined in the Utah Penitentiary for infractions of the Edmunds Law, the first to be released was William Fotheringham, who was liberated on the 4th of August of this year. James C. Watson, A. Milton Musser and Parley P. Pratt were the next to emerge; the former two on the 12th of October, the last named three days later. All had served out their terms of sentence, minus the time remitted for good conduct while in prison. They were gladly greeted by their friends, and congratulated, not only upon their deliverance, but upon the course they had pursued prior to and during their imprisonment.

Elder Angus M. Cannon, whose term expired simultaneously with those of Elders Musser and Watson, remained a voluntary prisoner in order to secure, for the benefit of his people, an early decision from the Supreme Court of the United States, defining "unlawful cohabitation." His case was now before that tribunal where it was soon to be argued and decided.

On the 17th of October sentence was pronounced by Judge Zane upon William D. Newsom and Aurelius Miner. The former was fined five hundred dollars and sentenced to three years' imprisonment for polygamy; and to this was added a fine of three hundred dollars and six months, imprisonment for unlawful cohabitation. Mr. Miner, for the latter offense, was also given the full legal penalty.

Judge Miner's case had some peculiar features. In the first place, being an attorney—the oldest practitioner in the Utah courts—he conducted his own defense, assisted by Mr. Kirkpatrick, and did it so ably and withal so boldly, that it led to proceedings for his disbarment. The scene in court on the day that he was sentenced for unlawful cohabitation was one of great interest. Motions for a new trial and arrest of judgment having been overruled, the Court in sharp tones called upon the defendant to "stand up."

Mr. Miner arose.

COURT.—"Are you prepared to say that you will obey the laws of

the United States in the future—this law as interpreted by the court; the law against polygamy and unlawful cohabitation?”

MR. MINER.—“If your Honor please, while I am a native-born citizen of the United States, since reaching my majority I have never said that I would obey all the laws of the United States.”

COURT.—“Well, how is it that you are practicing law? Does not your oath require you to do it? Let me have the statutes of 1884.”

MR. MINER.—“I was admitted before that statute was passed.”\*

COURT.—“You have stated that you were Assistant District Attorney of the United States?”

MR. MINER.—“I was.”

COURT.—“I suppose you took the oath as such assistant?”

MR. MINER.—“Yes, to support the Constitution of the United States. But for the last thirty-three years . \* \* \* there have been some of the statutes of the United States which I have said publicly that I would not obey, and there were others that I would not have obeyed if I had lived at the time they were enacted. [The speaker referred to the alien and sedition laws and the fugitive slave law, and of the latter said,] It required me as an individual, living in the Northern States, and every other individual, to convert ourselves into ‘nigger-catchers.’ \* \* \* When that law was passed I said I would not obey it—I would take the consequences of failing to obey it—and a former practitioner with me in Ohio was fined a thousand dollars and given six months’ imprisonment by the court of the Northern District of Ohio because he would not obey it. \* \* \* The reason I refused to obey it was because I regarded it as unconstitutional, which right I claim as an individual, precisely as those communities, made up of individuals, claimed the right to resist the law in order to secure its repeal.”

\* Judge Miner, who was a graduate of the State National College of New York, and a member of the bar in Ohio and Michigan, had come to Utah in 1854, on a visit to his uncle, Apostle Orson Hyde, whose daughter he married. The year of his arrival he was admitted to the Utah bar, and four years later became a Mormon. In 1883 he was admitted to practice in the Supreme Court of the United States.

Mr. Miner mentioned the Dred Scott case, in which the fugitive slave law was declared constitutional by the court of last resort, and yet was not considered constitutional by the Republican party—who virtually wiped it out of existence. After further remarks he came down to the Edmunds Act, which he said was a law reaching exclusively into the domain of morals where Congress had no right to go.

COURT.—“Well, Mr. Miner, it is not worth while for you to ask the question whether this law is right or wrong. You are not the one to say whether it is right or not. The Supreme Court of the United States has said that the law is constitutional and right, and it is not for you to say to the contrary.”

MR. MINER.—“The whole Republican party did that—”

COURT.—“They did it at their peril.”

MR. MINER.—“They were simply in the majority and the more powerful. \* \* \* These are matters of conscience between man and his God.”

COURT.—“Suppose his conscience should lead him to covet his neighbor's property and take it?”

MR. MINER.—“That is restrained by the higher law.”

COURT.—“Suppose he should covet his neighbor's wife?”

MR. MINER.—“That is forbidden by the Decalogue.”

COURT.—“Suppose he should covet his neighbor's daughter when he had a wife, and want that daughter, too?”

MR. MINER.—“That is a matter between them. If they are agreed upon it, nobody else's rights are infringed. I am glad your Honor mentioned that.”

COURT.—“The law says that polygamy is not right and calls it a crime.” \* \* \*

MR. MINER.—“I am aware of that.”

COURT.—“You are not the one to give the definition. The American people, through their servants in Congress, are the parties to determine what is wrong conduct and what is right, and, after they determine it and the Supreme Court pronounces their act valid, that is the end of it.”

MR. MINER.—“That is the end of legal controversy; I admit that; but not the end of controversy in the forum of conscience or the forum of debate.” \* \* \*

COURT.—“I understand that you take the position that you have a right to determine what laws of the United States are valid and what are not?”

MR. MINER.—“I do, sir.”

COURT.—“You cannot expect to practice law in this Territory or anywhere else in this country, if you stand up and say you will not obey the laws of your country. \* \* \* You being not only a citizen of the United States, but really an officer of the court, licensed and commissioned to practice law, aggravates the matter and makes it more wrongful in a moral point of view.”

The Judge sentenced the defendant to pay a fine of three hundred dollars and costs, and to be imprisoned in the Penitentiary for six months. He then directed the clerk to transcribe Mr. Miner's remarks and file them, and appointed a time for the latter to appear and show cause why his name should not be stricken from the roll of attorneys.

A week later, proceedings for Mr. Miner's disbarment began; he having been brought down from the Penitentiary for that purpose. He appeared in ordinary citizen's attire in lieu of the “many stripes” of the regular convict garb, which he had temporarily doffed, but was without the full beard that he usually wore, and which he had been compelled to sacrifice on entering the prison.

The charges against him were presented by Thomas Marshall, Esq., representing the Utah Bar Association. It was alleged that the defendant had been convicted of a misdemeanor, and had said that he would not obey the laws. His conviction was said to involve “moral turpitude” within the meaning of the Utah statutes. Mr. Marshall argued the points raised, and moved for the defendant's disbarment.

Mr. Miner, in reply, denied the allegation that he had said he would not obey the laws of the United States or of Utah Territory.

He had merely stated that there were certain laws which he once said he would not obey, and that he never did obey them, specifying the fugitive slave law. He had claimed the right to determine for himself what laws were constitutional and what were not constitutional; a right exercised by every citizen and every attorney, and without which no question affecting the constitutionality of a law could ever be brought before the tribunals competent to decide such questions. "I said that if a law was passed and my judgment upon that law was in error, and the law was pronounced constitutional; I must submit myself to its consequences. I hold that position today and I expect ever to hold that position. \* \* \* There is no law upon the statute book in active operation today that I have ever said I would disobey, or that I would counsel others to disobey." As to the question of his conviction of a misdemeanor involving "moral turpitude," Mr. Miner claimed that it was premature. An appeal was being prepared to a higher tribunal, and if that tribunal should reverse the decision of the District Court in his case, there would be no misdemeanor, no "moral turpitude," and consequently no foundation for the action of disbarment. What he had said about morals he repeated, denying the authority of any tribunal to determine and fix in his mind a question of morals. They were beyond human determination, so far as the enforcement of a conviction into men's minds was concerned.

Mr. E. D. Hoge followed, reiterating the statements of Mr. Marshall, and endeavoring to confute the defendant's argument.

Judge Zane then took the case under advisement.

On the last day of October it was again before the court. Mr. Kirkpatrick spoke for the defense, arguing that it was not customary to disbar men for sexual irregularities, and if an attorney could not be disbarred for adultery, why should he be for unlawful cohabitation? Did not one involve "moral turpitude" as much as the other?

In answer to this, it was contended that unlawful cohabitation was a worse crime than adultery.

Judge Zane now gave the defendant another opportunity to say

whether or not he would obey the Edmunds Law in future. Mr. Miner declined to make any statement, and his silence was taken as equivalent to a negative response. A written decision, disbaring Mr. Miner, was filed by the Judge on the 14th of November.\*

During that month Judge Zane sent four more polygamists to prison: all sentenced to the full extent of the law for unlawful cohabitation. They were Robert H. Swain, Fred H. Hansen, Thomas Porcher and John W. Keddington. Among a number of new arrests was that of Herbert J. Foulger, whose case the grand jury "segregated." In other words, he was thrice indicted for one offense.

As if the measures in operation were not sufficiently severe, Governor Murray and the Utah Commission, in their reports to the Secretary of the Interior in the autumn of 1885, recommended still more stringent legislation by Congress for the solution of the Mormon problem. The establishment of a Legislative Commission was suggested, to act in conjunction with the Governor in filling by appointment all offices then elective by the people, and it was even urged that a law, similar to that enacted in Idaho, disfranchising all members of the Mormon Church, be placed upon the statute book of the Nation. Congress was not ready to grant these requests, however, though it resumed, during the following winter, consideration of the bill out of which grew the Edmunds-Tucker Law.

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\* Mr. Miner remained disbarred until the early part of 1894, when he was reinstated a member of the Utah bar by order of Chief Justice Samuel A. Merritt.



*Adam Speirs*





## CHAPTER XVI.

1885-1886.

THE CRUSADE CONTINUED—ARREST OF APOSTLE LORENZO SNOW—HE IS CHARGED WITH UNLAWFUL COHABITATION—THREE INDICTMENTS FOR ONE OFFENSE—A BOMBHELL BURSTS IN THE ANTI-MORMON CAMP—ARRESTS FOR LEWD AND LASCIVIOUS CONDUCT—CONVICTED IN THE POLICE COURT, THE DEFENDANTS APPEAL TO THE DISTRICT COURT—THE ASSISTANT U. S. ATTORNEY REFUSES TO PROSECUTE THEM—THEIR ACCUSER SENT TO PRISON FOR CONSPIRACY—THE M' MURRIN-COLLIN EPISODE—ANOTHER PSEUDO "MORMON UPRISING"—PRESIDENT CLEVELAND DECEIVED INTO ORDERING TROOPS TO UTAH—THE CANNON CASE DECIDED AT WASHINGTON.

**J**UST at this juncture occurred an event, the most important of its kind that had taken place since the beginning of Utah's reign of terror. It was the arrest of Lorenzo Snow, one of the Twelve Apostles of the Church of Jesus Christ of Latter-day Saints, who was found by "the deputies" at his home in Brigham City, on Friday, the 20th of November.

In May of this year the venerable Apostle had been warned by advices from Ogden, the seat of the judicial district in which he resided, that a plan was being laid for his capture. Giving heed to the friendly admonition, and acting upon the counsel of his official superiors, already in exile, he went into retirement, remaining at home for about a fortnight, and then bidding family and friends farewell and journeying to the Pacific Coast. Returning to Utah after a tour of the North-west, he privately visited his home, but almost immediately set out upon another journey—this time to Wyoming. It was now the latter part of September. Three weeks later he was back at Brigham City, and there continued to abide until the date mentioned, when he was suddenly pounced upon and made a prisoner.

The capture was effected by seven deputy marshals, who, acting,

as was believed, upon information and not upon mere suspicion, made their way northward from Ogden during the hours intervening between midnight and daybreak, and surrounded the house in which the object of their search lay sleeping. Deputy Marshal Oscar C. Vandercook headed the party, which included Captain Greenman of Salt Lake City, and several officers from Weber County.

Having invested the premises, Messrs. Vandercook and Greenman proceeded to the kitchen door of the dwelling—the home of Mrs. Minnie J. Snow—and knocked. Day was just breaking. The servant girl, the only one of the household who was awake, demanded, “Who’s there?”

“Is Brother Snow in?” asked a voice, which also requested her to open the door. Instead of complying, the girl awoke Mrs. Snow. That lady quickly arose, and from the windows of her bed room took in the situation at a glance. She saw that the house was surrounded, the dark forms of the men being barely discernible in the grey light of morning. Two carriages with steaming horses stood at the front gate. The purpose of the untimely visit was only too apparent.

Mrs. Snow’s first care was to arouse her husband and inform him that the U. S. marshals had come to arrest him. Her next step was to answer the clangor of bells, which, with knocks upon doors and windows, now resounded through the house, mingled with impatient and excited demands for admittance.

“Who’s there?” she inquired, bent upon delaying the officers as long as possible, in order to give her husband time to dress and conceal himself.

“We are officers of the law—my name is Vandercook—we have come to search for Mr. Snow,” was the response.

“Oh,” said Mrs. Snow, with simulated surprise; “very well, if you will wait a moment for me to dress I will admit you.”

“All right, be as quick as you can, please,” politely answered Mr. Vandercook.

Mrs. Snow, after donning a wrapper and slippers, proceeded to

the door, unbolted and opened it, and confronted Messrs. Vandercook and Greenman. She courteously but firmly demanded of them the warrant authorizing them to search her premises. They immediately produced the desired document, and while she was reading it, began searching the parlor. Not finding anyone hidden there, they next lit a candle and explored the house from cellar to garret. Still they were unsuccessful.

Vandercook was now inclined to give up the search. "Well, Captain," said he to Greenman, as the twain paused in the hall, after descending the stairs, "I guess our man isn't here? Are you satisfied?"

His companion shook his head with a puzzled look. "No," said he, "there must be some other place."

They then renewed the search through the rooms on the ground floor, examining carefully every bed, dressing case or other article behind or within which a human being might hide, and at last, under a carpet that was ripped in a certain place, they discovered a trap door, which, being opened, disclosed "a little apartment perhaps four feet high by eight feet square." But it was empty. They were about to ascend,—which, had they done, they would probably have returned without their prisoner—when Vandercook espied a splinter, raised by the end of a screw driven from the other side of a partition. Satisfied that this indicated a door leading to another apartment, that ascended to ask Mrs. Snow about it.

She, overcome with terror when the deputies discovered the trap door, had hurried into another room to hide her emotion, and, being joined by her weeping children, a boy and girl of tender years, was now pouring forth an agonized prayer for her husband's safety. Mr. Vandercook, appearing upon the threshold of the room, asked her to explain the mystery of the inner door of the subterranean apartment; otherwise he would have to "chop it open." Mrs. Snow saw that all was over, and bade the officer do as he pleased.

Procuring a hatchet and returning to the place, he called twice upon Apostle Snow to come out, threatening at the same time to cut

down the partition. The second time, a voice answered, "All right, I'm coming out."

Emerging into the presence of his captors, Apostle Snow said, "Well, gentlemen. I have endeavored to avoid you, but it seems without success. You will have no further trouble." They read to him the warrant requiring him to be in Ogden forthwith. He was now joined by his weeping wife and children, and the scene that ensued moved even bluff old Captain Greenman to tears. He was left in charge of the prisoner, while Vandercook and the other officers went in search of witnesses.

Breakfast was prepared and served, and Greenman was invited to take a seat at the table. He declined the invitation, stating that he and his party intended to take breakfast at the Hot Springs.

The peaceful town of Brigham was thrown into a fever of excitement when it was learned what had taken place. Friends in large numbers flocked to the Snow residence to offer their sympathy and assistance. A party of stalwart young men approached Apostle Snow as he was about entering the carriage that was to convey him to Ogden, and said: "Speak the word, Brother Snow, and they shall never take you from town." With the calm dignity so characteristic of him, he waved them back, saying, "It's all right; Providence has so ordered this matter." He left directions for such of his family as had been subpoenaed, to follow on the first train, and was then driven southward.

The marshals with their distinguished prisoner reached Ogden early in the afternoon. He was at once taken before U. S. Commissioner Black, and gave bonds in the sum of fifteen hundred dollars for his appearance before that functionary at seven o'clock in the evening.

Seven o'clock came, but much to the disappointment of the eager crowd that thronged the court room, no examination was held. The defendant's bond was increased to eighteen hundred dollars, eight witnesses were required to give security for their appearance, and further proceedings were postponed until next morning. In these

preliminaries the Government was represented by Victor Bierbower, Esq., a recently appointed assistant to the United States Attorney: the defendant by Charles C. Richards, Esq.

Saturday morning, November 21st, Apostle Snow waived preliminary examination and was held in bonds to await the action of the grand jury. Two weeks later that body indicted him for unlawful cohabitation. Three indictments were found against him; one for the year 1885, another for the year 1884, and still another for the year 1883. It was a case of "segregation," the first destined to come to trial.

The arrest of Elder Snow caused a wide-spread sensation, not only in Utah, but far beyond her borders. His prominence and influence made him the most important prisoner that had yet fallen into the hands of the crusaders. The Mormons, as a matter of course, much regretted what had befallen him. The Anti-Mormons were correspondingly elated.

Just one day after his arrest, a bomb-shell burst in the Anti-Mormon camp. It was caused by the arrest of a number of their partisans, charged with lewd and lascivious conduct in violation of the local statutes. The first one to be dealt with was Deputy Marshal Vandercook, who, fresh from his exploit in the north, was arrested by the police, on Saturday evening, November 21st, just as he was alighting from the train at Salt Lake City. He made no resistance, pronounced it a "trumped-up affair," and accompanied the officers—Messrs. Burt and Hilton—to the City Hall. Thither an ex-U. S. Commissioner was brought, soon afterwards on a similar charge. The warrants had been issued by Alderman Adam Spiers, upon complaints filed by City License Collector B. Y. Hampton. Both defendants gave bonds for their appearance on the following Monday morning.

At the time set for the trial of Deputy Marshal Vandercook, the Police Court was thronged. The news of the arrests had spread like wild-fire. Not only was general interest awakened; but in some quarters absolute consternation reigned. This was caused by a

rumor—which proved to be well founded—that the police were in possession of a list of over a hundred names whose owners were liable at any moment to be taken into custody, for practices similar to those charged against the official named. Some of the prospective defendants were men who had served warrants, sat upon juries, and played various parts in the anti-polygamy movement then in progress. Just where the lightning would next strike was uncertain. Suspense added ten-fold misery to the fears of those who found themselves occupying positions the reverse of invulnerable. It was said that those whose names were “on the list” had been caught *in flagrante delicto* by detectives, who, in collusion with fallen women of the town, had undertaken this little diversion with a view to balancing the scales of the Blind Goddess in Utah, and visiting the rigors of the law upon certain crimes against which the Federal courts were not then proceeding, and at which, it was held, the Edmunds Law did not aim. The local statutes against lewd and lascivious conduct had been called into requisition, and under these the new crusade had commenced. What lent additional terror to the situation was the significant fact that the charges in these cases did not consist of glittering generalities. Details were given; names, dates, circumstances were all set forth. In short, it was just such data as eye witnesses would naturally be expected to produce; and eye witnesses the complainants claimed to be. License Collector Hampton was the leader of the detective force, which included several members of the regular police.

Half an hour went by after Judge Spiers had opened court, but though Deputy Marshal Vandercook, accompanied by his chief, Marshal Ireland, was promptly on hand, the proceedings did not begin. The delay was caused by the non-appearance of the defendant's attorneys, who were before the District Court endeavoring to procure a writ of habeas corpus for their client. The ground for the application was the alleged invalidity of the ordinance under which the arrest had been made. Judge Zane granted the writ, and the case was taken before the District Court.

On the same day that proceedings in the Police Court were thus stayed, two other arrests were made by the police for lewd and lascivious conduct. It was a merchant and a lawyer—the latter one of the assistants of the U. S. Attorney—who now gave security for their appearance when wanted. Great was now the agitation in Anti-Mormon circles, among both innocent and guilty. All could foresee the damaging effect of the threatened exposure upon the anti-polygamy crusade, supposed by sentimental people at a distance to be carried on solely by men of pure lives. But if those innocent of immoral practices were agitated, what shall be said of those with whom chastity was an unknown quantity, and who, for reasons known to themselves if not to the police, “stood in jeopardy every hour?” Men of families,—whose wives hearing that their husbands’ names were “on the list,” threatened their liege lords with all sorts of penalties if the rumors proved true,—hastily left town to avoid arrest. Some went to the police and begged them with tears in their eyes not to expose them and break up their families. Others, more desperate still, threatened to kill their accusers if their names were published in connection with the scandal. Many were thus self-convicted.

The Mormon Church was accused of thus instituting the anti-immorality movement as an offset to the polygamous prosecutions then so plentiful. The Anti-Mormon papers did not affirm the absolute innocence of the accused, but said that the Mormon authorities had hired prostitutes to entrap and lead astray men ordinarily virtuous, with a view to showing the superiority of the system of plural marriage over the immoral practices of courtesans and their associates. At the same time the most strenuous efforts were put forth to prevent a full ventilation of the matter in the courts.

As a matter of fact the Mormon authorities had nothing to do with the movement; though individual Mormons, most of them police officers, engaged in it. Their position was this: The Edmunds Law had been enacted, according to its framers and friends, to purify the moral atmosphere in Utah, but had only been put in operation

against polygamists. When the latter complained and called attention to this, they were told that the law was only aimed at plural marriage; other sexual sins being left to be dealt with by the local statutes. Accordingly, the local statutes were brought to bear upon cases to which it was claimed they would apply, and it was insisted that the work of purifying the moral atmosphere go on, even if it involved the punishment of men who were lying awake nights, worrying about the immorality of their neighbors, and planning measures for the suppression of polygamy.

The hearing before Judge Zane in the Vandercook habeas corpus case took place at the time appointed—Friday, November 27th; Messrs. Williams and Young, Moyle and Kenner representing Salt Lake City, the validity of whose ordinance had been called in question; and Messrs. Sheeks and Rawlins appearing for the petitioner. The Court's decision was rendered next day. It affirmed the validity of the ordinance, but held that it must be construed as applicable only to open lewd and lascivious conduct. Until this was charged, the defendant could not be deprived of his liberty. The decision liberated all who had been arrested by the police under the ordinance.

But the game was not yet played out. On the 4th of December the same defendants were again in the toils, their arrest this time being made by County Sheriff Groesbeck and his deputies. The charges against them—based on the other complaints—were alleged violations of a Territorial statute against the practice of resorting to houses of ill-fame. A number of others whose names were "on the list," were now run in by the police, and the prospect for a lively time in the Police Court never looked more promising.

Again proceedings were stayed by a writ of habeas corpus, and the case—one standing for all—was carried before the District Court, where it was heard on December 10th. The jurisdiction of justices of the peace in this class of cases was now the matter in controversy. Judge Zane held that they had such jurisdiction, and remanded the case back to the Police Court. An appeal was allowed,



however, to the Supreme Court of the United States. This suspended all proceedings against Deputy Marshal Vandercook.

Alderman Spiers went ahead with the other cases, however, and the defendants, convicted, were each fined two hundred and ninety-nine dollars and sentenced to three months' imprisonment. Appeals were taken to the District Court, where, on the 14th of December, the whole movement received its quietus in the granting of a motion made by Assistant U. S. Attorney Varian, to dismiss the cases on the ground that the prosecutions were the result of a conspiracy. Referring to those who had testified against the defendants, Mr. Varian declared that he "would not believe such scoundrels' on oath, even in the high court of heaven itself." Of those convicted by their testimony, he said: "I refuse to prosecute them, or to allow them to be prosecuted; I am sure they could not be convicted, and am certain they ought not to be."

The next step was the indictment by the grand jury of License Collector Hampton, who was now regarded as the mainspring of the so-called conspiracy. He was tried in the District Court, convicted on the same kind of evidence as that which Mr. Varian had pronounced so untrustworthy, and sentenced on December 30th to a year's imprisonment in the County Jail. He served out the full term of his sentence. And so ended this ineffectual attempt to suppress unlawful cohabitation "not in the marriage relation."

The year 1885 witnessed at its close another sensation, which capped the climax of all the excitements and agitations of that eventful twelve months. It was a personal and almost fatal encounter between a young Mormon named Joseph W. McMurrin, and Deputy Marshal Henry F. Collin, both residents of Salt Lake City. It occurred on an evening in the latter part of November, in the vicinity of that historic building, the Social Hall.

Deputy Marshal Collin was one of those who had made himself offensively conspicuous in hunting down and arresting prominent Mormons suspected of violating the Edmunds Law. He had recently figured in an encounter with Deputy Sheriff Andrew Burt, another

young Mormon, who, for some insulting remark, struck Collin; an act for which Judge Zane imposed upon Burt a fine of one hundred and fifty dollars, and sentenced him to five days' imprisonment. The Sheriff's deputy had already pleaded guilty to assault and battery and been fined twenty-five dollars by Police Justice Spiers, but this was not deemed a sufficient punishment for the "contempt" involved in "assailing an officer of the Court." Hence the second prosecution. Collin had also had trouble with McMurrin—a brother to Agnes McMurrin—while serving subpoenas in the case against his sister's husband, Royal B. Young. Warm words had passed between them but the quarrel had not come to blows.

Shortly after seven o'clock on the evening of Saturday, November 28th, five pistol shots, the first two muffled, the last three clear and distinct, were heard in the neighborhood of the Social Hall. That building being near to police headquarters, officers immediately started out to investigate the shooting. They had not reached the place from which the shots proceeded, when a wounded man staggered out of the west end of the Social Hall alley, made his way northward a few rods and fell helpless inside the gates of a lane separating the residences of Messrs. Henry Snell and Spencer Clawson. He had no sooner fallen than William Lloyd, a shoemaker, passed on his way home from the shop. The prostrate man called out, "For God's sake get a carriage, and send for my wife; I'm shot." Lloyd immediately started for the City Hall and met the officers coming from that direction.

City Marshal Phillips, Officer Thomas and Mr. Orson P. Arnold reached the lane about the same time. The wounded man was conveyed to the City Hall, placed upon a improvised bed and made as comfortable as possible. He was recognized as Joseph W. McMurrin. His injuries consisted of two ghastly wounds in the abdomen, through which his life-blood was copiously flowing. He was exceptionally strong and robust, or he could not have survived the fearful drain upon his vitality. As it was, he was thought to be dying, and after the surgeon—Dr. J. M. Benedict—had attended him, the follow-



*Chas L. Anderson*



ing deposition was made by McMurrin and taken down by City Recorder H. M. Wells:

QUESTION.—“Do you know who fired the shots?”

ANSWER.—“Deputy Marshal Collin.”

Q.—“Do you know his first name?”

A.—“No.”

Q.—“Did you see him plainly so as to recognize him?”

A.—“Yes, sir.”

Q.—“How close were you to him?”

A.—“He was right against me.”

Q.—“Where were you when the shooting occurred?”

A.—“In the alley-way by the Social Hall. I was on the south side of the alley-way. I crossed over to the north side. As I crossed I saw a person coming along. I saw who it was when he got close to me.”

Q.—“Who was it?”

A.—“Deputy Marshal Collin.”

Q.—“What happened then?”

A.—“Collin and I, you know, had words down in the Third Ward, when he came to subpoena witnesses. We ran against each other in the alley-way, Collin and I. I struck at him. He stuck a pistol up against my stomach and fired.”

Q.—“How many shots were fired?”

A.—“Two shots.”\*

Q.—“Did you fall?”

A.—“No, sir.”

Q.—“How far did you go after getting shot?”

A.—“I guess it was four or five rods.”

Q.—“What took place after the shooting?”

A.—“Nothing; he disappeared.”

Q.—“Didn't you speak to each other at all?”

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\* McMurrin being hit by two of the five shots, was in no condition to remember clearly as to the others.

A.—“No; not a word.”

Q.—“Was it light or dark?”

A.—“It was pretty dark.”

Q.—“Was any person else present?”

A.—“No, sir.”

Q.—“When you struck at him did the blow hit him?”

A.—“I think I struck over him.”

Q.—“Did you feel the effects of the wound immediately?”

A.—“I should think I did.”

Q.—“Was that all that took place between you?”

A.—“That’s all. Just put down that I returned that fire in the excitement, but then I guess I missed him.”\*

Q.—“Did you have a pistol?”

A.—“Yes; I am a watchman; I always carry one.”

Q.—“Which direction were you going in?”

A.—“From the east to west.”

(Signed)

JOSEPH W. McMURRIN.

Soon afterwards members of the wounded man’s family arrived, and he was removed upon a stretcher to his home.

Meantime two of the police—Messrs. Clayton and Thomas—had gone to look for Deputy Marshal Collin. They encountered Captain Greenman, and subsequently Marshal Ireland, neither of whom had heard of the shooting. They promised to get Collin and bring him to the City Hall.

The U. S. Marshal did not return, however, nor did anyone representing him appear at the City Hall. After the lapse of an hour or more, a warrant for Collin’s arrest was placed in the hands of Officers Salmon and Thomas, and they started out to serve it. Meeting Marshal Ireland on the street, they read to him the process authorizing them to take his deputy. The Marshal stated that Collin was in his custody and that he refused to give him up; but would produce him on Monday morning before U. S. Commissioner McKay.

\* McMurrin’s pistol, delivered to the police, was found not to have been discharged.

The next heard of Collin was that he was at Fort Douglas, having been taken thither from the Penitentiary, where the U. S. Marshal had first placed him for safe keeping.

It seems that the Marshal, after meeting Officers Clayton and Thomas, had been found by his fleeing deputy and had heard his account of the affair in the alley. Collin, who resided near the east end of that thoroughfare, said that he was returning home between seven and eight o'clock in the evening, and had just entered the west end of the alley when he was set upon by four men. He did not know any of them, but shot one and the others fled. He proceeded to his home, but soon repaired, in company with Miles Mix, his friend and neighbor, to the residence of the U. S. Marshal. This version of the affair caused that official to reconsider his design—if he had one—of surrendering Collin to the police. The Marshal stated that he feared his deputy might be lynched by the crowd that assembled at the City Hall after the shooting.

The friends of the fugitive next represented to the commander at Fort Douglas that the city was in a state of wild excitement over the shooting of McMurrin, and that there was imminent danger of the Penitentiary being attacked by the Mormons, for the purpose of securing and wreaking vengeance upon the person of Collin. General McCook was thereby induced to detail a body of men, armed and officered, to march across the bench to the prison, two miles distant, and conduct Collin to the Fort. The General was also told that the Mormons were holding meetings in all the city wards and discussing the situation; and that the Fort itself was liable to an attack. He ordered extra guards placed, and every precaution taken against a possible assault.

All this time profound peace reigned throughout the city. The majority of the people were greatly shocked and grieved over what had taken place—for McMurrin was much esteemed—but the sentiment of grief subdued even the natural anger and excitement engendered by what the Mormons believed to have been an attempt to murder, not Collin, but McMurrin. Their usual services were held

that Sabbath, and many fervent prayers offered for the wounded man's recovery, but there were no incendiary gatherings or speeches and no attack upon the Penitentiary or the Fort was even contemplated.

Nevertheless, for days the wires east and west were kept warm, detailing to the country how the Mormons all over Utah were arming and rising, and how a general massacre of Gentiles was imminent. Telegrams of a highly sensational character were sent to the seat of government, and President Cleveland was advised to place the Territory under martial law. The President telegraphed to General McCook requesting him to investigate the reports and inform him at once as to their truth or falsity. The General did as was desired, and expressed himself as perfectly satisfied that there was no foundation for the fear of a Mormon uprising.

Upon his recommendation, however, a movement previously contemplated, to increase the standing force at Fort Douglas, was now carried into effect. Battery D, of the Fifth Artillery, was forwarded from Omaha, over the Union Pacific railroad, arriving at Salt Lake City on the 7th of December. There were sixty-five men, four rifled steel guns, with caissons, and sufficient horses to complete the equipment of the battery. As the gallant little force filed up South Temple street on its way to the Fort, band playing, snow flying and frost nipping the fingers of the soldiers—who surveyed with wide-eyed wonder the peaceful streets of the much-maligned city—one of them, an Irishman, was heard to inquire, “Whaire is the inimy intrinched?” A volume could tell no more concerning the character of the reports sent abroad to deceive the country relative to the situation in Utah.\*

The arrival of this detachment rendered it necessary to find

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\* An eastern firm, accepting as authentic, or desiring to test the truth of the tale that the Mormons were in rebellion, communicated with Z. C. M. I. offering a large lot of swords, guns, saddles and other military equipments at a great discount. Z. C. M. I. promptly declined the proffered bargain; stating that there was no sale in Utah for such articles, and it did not wish to lumber up its shelves with dead stock.



other quarters for some of the men already at the garrison, and General McCook, probably out of deference to the Anti-Mormon sentiment, sent forty-five men of Company K, Sixth Infantry, under Captain Charles G. Penny, to occupy quarters and act as a provost guard within the city.

Delegate Caine, at Washington, lost no time in acquainting the heads of government with the true state of affairs in this Territory. "You, sir, and your constitutional advisers," said the Delegate, in a communication to the President, dated December 7th, "have been deceived by designing men who seek to create in the East the impression that the Mormon people are unruly and turbulent. The order of additional troops to Utah is the result of a deliberate attempt on the part of the Republican United States officials there to create the impression that there is danger of a Mormon outbreak. The object of this is, first, to make it difficult for a Democratic administration to remove the officials, and second, to influence Congress to enact legislation in the interest of a desperate ring of adventurers, who seek to control the government of the Territory. \* \* \*

There is no necessity for the presence of additional troops in Utah. You, sir, as well as your advisers, have been imposed upon by Governor Murray and Marshal Ireland."

At this time there was in progress at Salt Lake City an official investigation into the rumors relative to the alleged impending outbreak. It was instituted by the city authorities and began on the 5th and ended on the 8th of December. Governor Murray, Secretary Thomas, General McCook, the U. S. Attorney, the U. S. Marshal, and other Federal officials were invited to attend, but none were present at the proceedings. The findings of the municipal authorities are contained in the following excerpt of the minutes of the meetings held:

#### REPORT OF SPECIAL COMMITTEE.

SALT LAKE CITY, December 8th, 1885.

*The Hon. the Mayor and City Council:*

GENTLEMEN.—Your special committee to whom was referred the matter of drafting a preamble and resolutions, embodying the result of the investigation by the council into the

rumors that have been circulated throughout this country detrimental to the peace and welfare of the city and its inhabitants, beg leave to report the accompanying resolutions and recommend their adoption.

Very Respectfully,

JOSEPH H. DEAN,

H. J. GRANT,

T. G. WEBBER,

JOHN CLARK,

GEORGE STRINGFELLOW,

JUNIUS F. WELLS,

JAMES SHARP, Mayor,

F. S. Richards, City Attorney,

ORSON F. WHITNEY, City Treasurer.

Special Committee.

On motion of Alderman Pyper, the report was approved. The resolutions were read, as follows:

#### RESOLUTIONS IN RELATION TO CURRENT RUMORS RESPECTING THE PEACE, REPUTATION AND WELFARE OF SALT LAKE CITY.

*Whereas*, Certain rumors affecting the peace, reputation and welfare of Salt Lake City and its inhabitants are prevalent, and have been circulated abroad to the injury of the same, and

*Whereas*, To the knowledge of the city officials there was no cause existing on which these evil reports could be justly based, and

*Whereas*, Official notice appears to have been taken of said rumors by the general and military authorities of the Nation, and it became expedient that the mayor and city council of said city institute a thorough investigation of the same, that the facts upon which they were founded, if any existed, might be made known, and

*Whereas*, Such investigation has been held, at which Federal officials of the Territory, military authorities of Fort Douglas and prominent residents and business men, and the citizens generally, were invited to be present to give such information as they might be in possession of respecting the peace and good order of said city, and the injurious rumors affecting the same, and

*Whereas*, After diligent and searching inquiries and the taking of reliable testimony, such rumors as had taken definite form and as were reported to the city officials, were refuted; among these were the following, namely:

A body of armed men is said to have been seen riding into the city along West Temple Street before daylight on Monday morning, November 30th. This rumor was traced back by the city marshal from the person who first gave the information to the mayor, to one Mr. Van Horn, of the Continental Hotel, the only one who was reported to have seen the armed men, and he denies any knowledge whatever of the matter.

The rumor that armed men lined the road to the Penitentiary for the supposed purpose of taking Henry Collin from the custody of the United States officers, came to the



*G. Thompson*



city marshal from United States Marshal Ireland, who admitted, however, that on going over the road he had seen nothing himself to justify the report, and could not name anyone who had. The city marshal then rode out to the Penitentiary, traversing both routes, making diligent inquiries of residents along the way, but could not learn that any armed men had been seen anywhere in the vicinity.

The rumor of threats made to lynch Collin after the shooting of McMurrin, on Saturday night, November 28th, was refuted by City Marshal Phillips, who testified that he had heard no such threats on the night in question, and that the crowd at the City Hall did not exceed two hundred people and was quiet and orderly. The assertion of Assistant District Attorney Varian to the city marshal, that a rope had been seen in the crowd by one Thomas Curtis, was refuted by Curtis himself, who denied being at or near the City Hall at any time on Saturday, and heard nothing of the shooting until Sunday morning.

The rumor that quantities of arms and ammunition were secreted in the general titling store was ascertained to be false by a personal visit to the premises by General McCook and his adjutant, Mayor Sharp and City Attorney Richards. The General expressed himself as perfectly satisfied that the rumor was without foundation.

The report that the Mormons were arming themselves, and organizing for an outbreak under the direction of their leaders, and that in the outer settlements they had been ordered to be ready at a moment's notice to march to Salt Lake City, was met by the testimony of Apostles Lorenzo Snow, Franklin D. Richards, John Henry Smith, Heber J. Grant and John W. Taylor, each of whom declared that from his own personal knowledge the rumors were utterly untrue. Hon. John Sharp, William Jennings, and other prominent citizens testified to the same effect, and that such a condition of affairs as had been reported could not exist among the people without their knowledge.

Other rumors of insecurity to life and property were refuted, and others still were of so vague a character that it was impossible to trace them to any definite source, or give them tangible form. Therefore,

*Be it Resolved by the Mayor and City Council of Salt Lake City,* that the reports or rumors of any condition of affairs other than of the most peaceful character prevailing at the present time in this city, are false.

That at no time in the history of this city have the lives and property of its non-Mormon inhabitants been more secure than now.

That the reports to the contrary have been accredited and circulated by Federal officials of this Territory for some purpose best known to themselves.

That to the extent they or any others have circulated these false reports abroad, they have defamed the city and injured its people.

On motion of Alderman Waddell the resolutions were unanimously adopted.

On motion of Alderman Waddell the council adjourned.

JAMES SHARP, Mayor.

Attest:

HEBER M. WELLS, Recorder.

A copy of this report was sent to Delegate Caine, and by him transmitted to President Cleveland.

The next link in the chain of incidents connected with the bloody encounter in Social Hall alley, was the so-called examination of Deputy Marshal Collin for the shooting of Joseph W. McMurrin. In reality it was the trial of McMurrin for an alleged assault upon Collin. It was conducted before U. S. Commissioner McKay, and began on the 22nd of January, 1886. McMurrin was not present, and the examination went on without him. A marvelous and unexpected change had taken place in his condition, and it was now thought that he would recover. The bullets from Collin's pistol had passed through his body, and been taken out from beneath the skin at the back. As the time for the examination drew near, suspecting that it was the design to turn the proceeding against him, and remembering the fate of Messrs. Burt and Hampton, he determined to leave home. Though still very weak, he carried out his desperate resolve, and did not appear as a witness before the Commissioner.

Many others testified, however, and it was shown that on the night of the shooting several men besides McMurrin and Collin had been seen in the vicinity of the Social Hall, and that two or three emerged from the alley and ran in different directions just after the shots were fired. Whether these men were McMurrin's friends, or Collin's, or the friends of either, was not made clear; men having been known to run when shots were fired, with no more sinister purpose than to get out of the way of other shots that might follow. McMurrin's deposition that he and Collin were the only ones present, and the latter's statement that four men—he did not say "in buckram"—"let drive at him," balanced each other, there being no testimony in support of either assertion.

One thing was well established, to-wit: that five shots were fired, and that two of them entered McMurrin's body. Collin's revolver, examined soon after the shooting, was found by his friends to have five of its six chambers empty, while McMurrin's pistol, also a six-shooter, contained, according to the testimony of the police, all its cartridges unexploded.

Deputy Marshal Collin left Utah soon after the close of the

examination, which ended in his discharge. McMurrin, after spending many months in Europe, returned and gave himself up to the law. It was found that he had not been indicted, and the charge against him was dismissed.

December, 1885, brought with it the decision of the United States Supreme Court in the Cannon case. Through the influence and exertions of Mr. F. S. Richards, this case, after an appeal had been refused in Utah, had been carried on a writ of error to Washington. Ordinarily it would not have come up for two or three years—owing to the crowded condition of the calendar—but Mr. Richards caused it to be advanced, first to December 7th, and then to November 16th of this year. Two obstacles being overcome, a third presented itself. It was feared by the friends and predicted by the foes of the appellant, that the Supreme Court would refuse to consider the case for want of jurisdiction.\* But Attorney-General Garland and Solicitor-General Goode, in order that the Mormon people might obtain from the Court a construction of the phrase “unlawful cohabitation,” agreed not to raise the question of jurisdiction. The case, therefore, to the surprise of almost everybody, was taken up on its merits and thoroughly discussed. Solicitor-General Goode spoke for the Government, and Mr. Richards for the appellant.

The Court’s decision was delivered by Mr. Justice Blatchford on the 14th of December. It sustained the action of the Utah courts, and declared that the offense of unlawful cohabitation was complete, without sexual intercourse, when a man flaunted in the face of the world “the ostentation and opportunities of a polygamous household.” “A man cohabits with more than one woman when, holding

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\*The congressional act of June 23, 1874, known as the Poland Law, provided that “a writ of error from the Supreme Court of the United States to the Supreme Court of a Territory shall lie in criminal cases, where the accused shall have been sentenced to capital punishment or convicted of bigamy or polygamy.” Thus the granting of appeals in cases of these offenses denied appeals in all others. The Edmunds Law was not then in existence, and there was no such offense as “unlawful cohabitation.”

out to the world two women as his wives by his language or conduct or both, he lives in the house with them and eats at the table of each a portion of his time."

It was not a unanimous decision. Justices Miller and Field dissented; the former stating that it was "a strained construction of a highly penal statute," to hold that men could be guilty under that statute without "actual sexual connection."

On the day that the decision was rendered, Angus M. Cannon paid his fine and emerged from the Utah Penitentiary, where he had remained a prisoner two months past his time, in order to secure a ruling—more favorable than this, it had been hoped—from the court of last resort. On regaining his liberty he immediately went into retirement to evade the processes upon which it was designed to re-arrest, re-convict and return him to prison.





D. H. Beery



## CHAPTER XVII.

1885-1886.

THE TRIAL OF APOSTLE LORENZO SNOW—THREE CONVICTIONS FOR ONE OFFENSE—THE APOSTLE'S ADDRESS TO THE COURT—JUDGE POWERS PRONOUNCES THE TRIPLE SENTENCE—THE SNOW CASE BEFORE THE SUPREME COURT OF THE TERRITORY—"CONSTRUCTIVE COHABITATION"—THE JUDGES DISAGREE—A WRIT OF ERROR GRANTED BY CHIEF JUSTICE ZANE—THE CASE CARRIED TO WASHINGTON—PENDING FURTHER PROCEEDINGS, APOSTLE SNOW SURRENDERS HIMSELF A PRISONER—OTHER ELDERS SENT TO THE PENITENTIARY—ABRAHAM H. CANNON'S SPEECH IN COURT—THE USE MADE OF IT BY THE ANTI-MORMONS.

THE year 1885 was not destined to die until another notable event—the sequel to one already narrated—had been added to its annals. It was the trial and conviction of Lorenzo Snow, with an account of whose arrest and indictment the previous chapter began.

The charge against the venerable Apostle was unlawful cohabitation. The question of what constituted that offense had been settled by the decision of the Supreme Court of the United States in the Cannon case. Another question, equally important, but one fated to draw forth a far different ruling from that august tribunal, now came to the front. It was the question of "segregation."

It has been shown how the three years for which the defendant was called to account were divided by the grand jury into three periods, and an indictment found for each—that is, for 1883, 1884 and 1885.\* The three indictments were almost identical in form, that for the year 1885—upon which the defendant was first tried—reading as follows:

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\* One of the grand jurors was in favor of indicting Apostle Snow seven times, once for each of his wives; but for some reason the brilliant idea was not acted upon.

The grand jurors of the United States of America, within and for the district aforesaid, in the Territory aforesaid, being duly empaneled and sworn, on their oaths do find and present that Lorenzo Snow, late of said district, in the Territory aforesaid, heretofore, to wit: On the first day of January, in the year of our Lord one thousand eight hundred and eighty-five, at the County of Box Elder, in said district, Territory aforesaid, and within the jurisdiction of this Court, and on divers other days and times thereafter, and continuously between said first day of January, A. D. 1885, and the first day of December, A. D. 1885, did then and there unlawfully live and cohabit with more than one woman, to wit: With Adeline Snow, Mary H. Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Phoebe W. Snow, and Minnie Jensen Snow, and during all the periods aforesaid, he, the said Lorenzo Snow, did unlawfully claim, have, and cohabit with, all of said women as his wives, against the form of the statute of said United States in such case made and provided, and against the peace and dignity of the same.

J. W. McNUTT,

Foreman of Grand Jury.

V. BIERBOWER,

Assistant U. S. District Attorney.

The trial began on Wednesday, December 30th. The proceedings took place before Associate Justice Powers, in the District Court at Ogden. The prosecution was conducted by Assistant U. S. Attorney Bierbower, and the defense by Messrs. F. S. Richards, Bennett, Harkness and Kirkpatrick, R. K. Williams, C. C. Richards and Henry Rolapp.

The Federal Court room at the Junction City never held a larger or more attentive audience than that which thronged it on this memorable occasion.

The sight that remained throughout the trial the cynosure of all eyes, was a group of persons seated immediately in the rear of the defendant's counsel. The central figure was that of an aged man, yet one upon whom age seemed to sit lightly. Tall, slender, but gracefully proportioned, with a fine head well-balanced and crowned with luxuriant locks of wavy, steel-gray hair; a face of refined Jewish cast, prominent nose, full beard, and brilliant but kindly beaming eyes, set beneath a brow where intelligence and nobility were enthroned:—no honest man, a reader of character, could look upon Apostle Lorenzo Snow, as he sat there calm, composed, dignified and benign, and say, "There sits a criminal or one

capable of crime." The party surrounding him were his wives, Adeline, Sarah, Harriet, Eleanor, Mary, Phoebe, and Minnie; the last-named with an infant in arms.

The court was duly opened and the case of the United States *vs.* Lorenzo Snow, called. Both sides announced themselves as "ready."

The jurors chosen to try the case were D. H. Spencer, A. Stone, Adam Kuhn, Alex. T. Bowman, George Bune, E. W. Smout, John Keck, Benjamin Garr, Frank Carson, Thomas Grant, Joseph Smith and Frederick Foy; all non-Mormons and of course anti-polygamists.

Prior to the examination of witnesses, Mr. Harkness stated that in order to save time, the defendant was willing to admit that he had been married to the women named in the indictment, that he had never been divorced from them, and that he still claimed each woman as his wife.

Mr. Bierbower accepted this admission as an aid to the prosecution, and Judge Powers asked if the defendant wished to admit that he had publicly claimed the ladies as his wives during the time charged in the indictment.

Mr. Harkness answered that he could not say that his client had publicly claimed them as his wives. It was the relationship of husband and wife that was not denied. Of course, the defendant would not admit anything tending to show that he had cohabited with more than one woman during any part of the time charged in the indictment.

A brief discussion ensued as to the evidence to be admitted; Apostle Snow's counsel claiming that his conduct between January and December, 1885, the time covered by the indictment under which they were proceeding, ought alone to be considered; and the other side contending that evidence of the conduct of the defendant prior to that time was admissible. Judge Powers held, with the prosecution, that this was in consonance with the rulings of the Supreme Court of Utah and the Supreme Court of the United States.

The following named witnesses were then sworn and inter-

rogated: Mesdames Harriet, Mary, Eleanor, Sarah, and Minnie Snow; Dr. J. B. Carrington, a Brigham City physician; Mrs. Lorenzo Snow, Jr., John F. Olsen, Franklin H. Snow, David H. Peery, Miss Emma Josephson, Lucius Snow and Deputy Marshal Vandercook.

The first four ladies testified that they were the defendant's wives, but that he had not lived with them during the past year, nor did they remember that during that time he had introduced them as his wives. He had supported them and their children and had made brief calls at their houses, but had not slept, eaten or lived there.

The fifth witness—Minnie J. Snow—stated that she was the defendant's wife, and that he had lived with her since her marriage, and that his mail came to her house.

Dr. Carrington testified that he had seen the defendant at the house of his wife Sarah, and sitting with her in the theater. Witness had seen him riding in a carriage with Sarah and Minnie, and he thought Harriet was also in the vehicle. All this was in 1885. Dr. Carrington likewise believed that he had heard the defendant preach on the subject of plural marriage during that year.

Franklin and Lucius Snow, sons of the defendant, stated that they had heard their father introduce Harriet and Sarah as his wives. This introduction was to David H. Peery, in the grand jury room at Ogden, in November, 1885.

Mr. Peery had no recollection that the word "wife" was used on that occasion.

Marshal Vandercook narrated the circumstances of the defendant's arrest at the home of Mrs. Minnie Snow.

From the other witnesses nothing material was elicited.

The court adjourned until ten o'clock next morning.

The witnesses examined on the second day of the trial were C. J. Corey, Mrs. Sarah Snow, Judge P. F. Madsen, Henry E. Bowring and M. L. Ensign.

Mr. Corey, who had formerly lived at Brigham City, pointed out upon a diagram the location of the Snow residences.

Mrs. Snow rebutted the testimony of Dr. Carrington as to her



*William J. Bartlett*





being at the theater or riding in a carriage with her husband during the year 1885.

Judge Madsen, of the Box Elder County Court, produced deeds filed for record in 1874, and most of which were recorded in 1882, by which the defendant had transferred to each of his wives her own home. Witness stated that it was the repute in Brigham City that Apostle Snow, for several years, had lived with but one wife, and he gave evidence showing this to be the case.

Mr. Bowring, a resident of Brigham City, testified to the same effect; and from the remaining witness nothing new was ascertained.

While Mr. Bowring was being examined, Judge Powers asked the witness: "Have you heard the defendant preach the doctrine of plural marriage in 1885?" and "Do you know whether Mr. Snow has changed his opinion upon that subject?" In answer to the first question, the witness stated that he had no recollection of the matter, and to the second, that he did not know. At this point Mr. Harkness objected to the procedure—which practically made the Judge an assistant to the prosecution—and his Honor smilingly "sustained the objection."

The evidence being all in, or more properly speaking, all out,—for no evidence worthy the name had been introduced—a recess was taken until the afternoon.

At half past one proceedings were resumed, and in the presence of a vast throng, which not only filled the commodious hall, but overflowed into every adjacent aisle and passage, while hundreds remained outside, unable to gain admittance, the attorneys delivered their arguments.

The first speaker was Prosecuting Attorney Bierbower. He congratulated the jury upon the speedy termination of "the most important criminal trial ever conducted in Utah Territory," important not only from the fact that the defendant was one of the Twelve Apostles of the Mormon Church, but also because it was the first trial under the Edmunds Law where the offense of unlawful cohabitation had been "segregated." He reviewed the testimony in the case,

recited the history of congressional legislation against polygamy, affirmed the constitutionality of the Edmunds Act, which he claimed the defendant had violated in recognizing and visiting his plural wives, and finally said:

Mr. Snow stands before this jury in a dual capacity, as an individual and a representative. He is acknowledged to be one of the most learned and scholarly of all the Apostles. His collegiate training, his extensive travels, \* \* \* his eloquence in the pulpit, and his vast wealth, all combine to make him preeminently the representative of his people. One word from his eloquent tongue, or one line from his caustic pen, would go farther toward settling this vexed question, than any other dozen men in the Mormon Church. I verily believe that the example of his conviction will be more potential for good than would be the conviction of three score of the Elders, Deacons and Bishops. In this case we are fighting the throne itself. And I will venture to prophesy now, that with his conviction, and those that are to follow, the time is not far distant when there will come a new revelation which will put an end to polygamy.

Mr. Harkness then spoke. He stated that the prosecuting counsel and himself were somewhat at variance as to what the defendant was charged with, and what was the real issue in the case. He did not dispute that the Edmunds Law was valid; but maintained that the defendant stood before the court precisely as any other party charged with a criminal offense, and must be convicted by the same measure of evidence. It was not enough to show that he was a Mormon; he must be proven guilty of the offense charged in the indictment, which was that he had lived and cohabited with all the women named therein, during the year 1885. This had not been shown. The defendant's admission that those women were his wives, under a compact considered by him and them indissoluble, was not to be taken, any more than were his brief casual day-time visits to their homes, as proof of unlawful cohabitation. Even if he had introduced them as his wives in Weber County—which was not Box Elder County, the place named in the indictment—there was not a scintilla of evidence that he had lived or cohabited with them. The habit as well as the repute of marriage must be shown, in order to convict him.

Mr. Harkness was followed by his colleague Mr. F. S. Richards, who further satirized the opposing argument, declaring that it was

virtually a request to the jury to convict the defendant for being a Mormon Apostle.

The final speech was made by Mr. Bierbower. He remarked that were it not for professional courtesy to his brother lawyers on the other side, he might with confidence "close his case here."\* He facetiously described how the defendant was "dug out of a subterranean cavern as a frontiersman digs out a wood chuck," and asked: "Why this hiding and evasion if he was complying with the law?" And if the defendant had complied with the law in the past, why would he not promise to do so in the future? He then proceeded to criticise the defendant's attorneys for setting up in his defense that he had not been living with all his wives, and said he was unwilling to believe that the Apostle was so heartless and cruel as to separate from and abandon "these venerable women" whom he had married in "the dark and stormy days of Nauvoo."†

At the conclusion of the arguments, the defendant's attorneys requested the Court to instruct the jury in such a manner as to protect their client against the possible effect of the false reasoning of the Prosecuting Attorney. The request was denied except in so far as the Court included in its charge one or two of the points suggested.

After informing the jurors that they were to decide this case as they would any other, "simply upon the law and the evidence," the Judge stated that the law was well settled, and the question to be considered was—Were the defendant and these women "living in the habit and repute of marriage?" It was not necessary that the evidence should show sexual intercourse, the occupancy of the same sleeping room, or a residence beneath the same roof. If they found that the defendant had cohabited, that is, held out to the world two

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\* Not only he, but nine-tenths of those who were watching the progress of the case, were perfectly confident as to how it would close.

† The Mormons thought that Mr. Bierbower, in order to be consistent, should have animadverted upon the Federal Government and its representatives, for requiring these "heartless and cruel separations" that he pretended to deplore.

or more women as his wives during the year 1885—and evidence as to what occurred prior to that time, as tending to throw light upon the relations of the parties within the time charged, was before the jury for their consideration—they were to bring in a verdict of guilty.

The jury thus instructed, retired, and Judge Powers announced an adjournment until half past seven in the evening. The time came, and the jury returned into court with the verdict they had been waiting for some time to deliver. Amid a deep silence the foreman, Mr. Spencer, at the call of the clerk, asking for the verdict, arose and responded "Guilty."

All eyes were now turned towards the defendant. Calm and dignified as from the beginning, he sat there unmoved, beneath the sympathetic gaze of friends, and the gloating glances of his enemies. The deep hush that prevailed for several moments was broken by Mr. F. S. Richards who arose and gave notice of a motion for a new trial, asking indulgence in the preparation of papers. The request was granted.

This trial made plainer than ever the fact that the judicial war then being waged was against the principle no less than the practice of plural marriage. It was not enough for a Mormon with two or more wives to go into court and prove himself innocent of living with more than one of them; he must promise not to practice or teach this principle of his religion, and if he refused to make the promise, deeming it an act of dishonor—an abandonment of Christ to burn incense to Diana—he was sure to be convicted, fined and imprisoned. If he continued to claim them as wives—and the covenants that bound them to him were, in his belief, indissoluble—it was assumed that he cohabited with them, and upon that assumption he was punished. Judge Zane had held, and the Supreme Court of the United States had decided, that unlawful cohabitation was complete without sexual intercourse, if a man ate at the same table or slept under the same roof that sheltered two of his wives. Judge Powers, sustained by the spirit if not the letter of that decision—now advanced the idea



*William Gedg.*



that it was not necessary to eat at the same table or dwell under the same roof with a plural wife, in order to commit unlawful cohabitation. The offense was complete when a man, to all outward appearances, was living or associating with two or more women as his wives; and he would be deemed guilty of so living and associating, if seen at the theater or in a carriage with or in any way recognizing the relationship between himself and the women to whom he had been married, and from whom he had never been divorced. The law could not grant him a divorce from his plural wives—who were not lawful wives—and yet he must effectually separate himself from them; in what way the courts never prescribed. His refusal to promise to obey the law—a law so variously interpreted as to form a labyrinth of judicial contradictions—was regarded as a confession of guilt; and the presumption of guilt was increased if the defendant, not willing to renounce his religion, and not wishing to be prosecuted upon a multiplicity of indictments, covering every year, month or week of three years, had been captured while hiding from the officers. Such was the situation of Apostle Lorenzo Snow.

His second trial—the one under the indictment for 1884, and by which, in violation of the Constitution, he was twice placed in jeopardy for the same offense—took place on the 4th and 5th of January, 1886. It was in many respects a duplicate of the first trial, though it had its peculiar features. The personnel of the jury was different, but the character of its material was the same. The prosecution and defense were represented by the same counsel as before, and the witnesses had all testified at the first trial.

Prior to the empaneling of the jury, the defendant, having entered a plea of not guilty, made a further plea to the effect that his former conviction should act as a bar to another prosecution. To this plea the Prosecuting Attorney demurred, and the Court sustained the demurrer. The trial was then proceeded with, and by the time the witnesses for the prosecution had testified, evening had fallen, and an adjournment was taken until next morning.

The defense then put their witnesses upon the stand. A state-

ment was elicited from Mr. H. E. Bowring that Adeline Snow was reputed the first wife of the defendant. What use Judge Powers made of this item of information will appear later. With this exception the testimony was much the same as that given on the former occasion.

The arguments were made by Mr. Bierbower for the prosecution, and by Messrs. M. Kirkpatrick and F. S. Richards for the defense. Mr. Kirkpatrick's address was exceptionally concise, forcible and eloquent. Mr. Richards also made an effective speech, during which he sharply satirized the suggestion of the Prosecuting Attorney, that because Apostle Snow did not live with all his wives he should be punished for injustice and inhumanity. He also made telling use of a remark said to have been made by Mr. Bierbower on the street, after the first trial, to the effect that he believed Apostle Snow had honestly endeavored to obey the law and had done all that ought to be required of him.

The Judge charged the jury, using much the same language as before. He added, however,—and this was the use made of the information that Mrs. Adeline Snow was the reputed first wife of Apostle Snow—that if the jury found, beyond a reasonable doubt, that the defendant had, during the year 1884, a legal wife living at Brigham City, Box Elder County, Utah Territory, from whom he was not divorced; that he recognized her as his wife, held her out as such, contributed towards her support, and that during that year he lived in the same house with “the woman Minnie,” recognized her as his wife, associated with her as such, and held her out as his wife, then the offense of unlawful cohabitation was complete and they should find the defendant guilty.

A verdict of guilty was rendered accordingly, the jury being absent but a few moments from the court room. The defense gave notice, as before, of a motion for a new trial.

Thus did Judge Powers, who in the first trial had held that to prove cohabitation it was “not necessary to show that the defendant and these women or either of them occupied the same bed, slept in



the same room, or dwelt under the same roof," hold in the second trial that living in the same house with "the woman Minnie" and treating her as a wife, while he had a legal wife--Adeline--constituted the offense. Before, the defendant had been convicted for admitting the relationship of husband and wife between himself and more than one woman, regardless of marital intimacy, which he had not practiced since March, 1882, with more than one woman; such intimacy with the one not being denied. Now he was convicted because of his admitted intimacy with Minnie and the reputed fact that his legal wife was Adeline, with whom it was presumed—not proven—that he had been intimate during the time charged in the indictment. It was this assumed intimacy with the legal wife that gave rise to the question of "constructive cohabitation," which, next to "segregation," became the main issue in the Snow case, and the one upon which a ruling was first solicited from the court of last resort.

Judge Powers had now virtually laid down the law that a polygamist, in separating from all but one of his wives, must cleave unto the first or legal wife. Judge Zane had previously ruled that it did not matter which of his wives a polygamist continued to live with, so long as he lived with but one of them. Thus what was lawful in the Third Judicial District was now unlawful in the First.

Apostle Snow's third trial took place, at his request, immediately after the close of the second trial. He was weary of the farce,—the burlesque on justice—that was being enacted, and, though his attorneys were in favor of an effort to have this case continued for the term, he would not consent. He expressed his willingness to have a jury empaneled from the spectators present, and to be tried at once on the indictment for 1883. Accordingly the case was then and there disposed of, haste and hurry characterizing all the proceedings. Some of the jurors chosen had served in the first and second trials, witnesses gave similar testimony to that given before, no arguments were made by the defense, the charge to the jury was practically the same as in the second trial, and the verdict, given without deliberation, was identical with those previously rendered.

The Court appointed Saturday, January 16th, as the time for hearing arguments upon the motions for new trials, and for passing sentence upon the defendant, whose bail was now fixed at six thousand dollars.

At the time appointed, Apostle Snow presented himself at the hearing, where the motions were argued and overruled. A single ruling disposed of all three. Judge Powers now asked the defendant if he had anything to say prior to sentence being passed upon him. The Apostle addressed the court as follows:

Your Honor, I wish to address this court kindly, respectfully and especially without giving offense. During my trials under three indictments, the court has manifested courtesy and patience, and I trust your Honor has still a liberal supply, from which your prisoner at the bar indulges the hope that further exercise of those happy qualities may be anticipated. In the first place, the court will please allow me to express my thanks and gratitude to my learned attorneys for their able and zealous efforts in conducting my defense.

In reference to the Prosecuting Attorney, Mr. Bierbower, I pardon him for his ungenerous expressions, his apparent false coloring and seeming abuse. The entire lack of evidence in the case against me on which to argue, made that line of speech the only alternative in which to display his eloquence; yet, in all his endeavors, he failed to cast more obloquy on me than was heaped upon our Savior.

I stand in the presence of this court a loyal, free-born American citizen; now, as ever, a true advocate of justice and liberty. "The land of the free, the home of the brave," has been the pride of my youth and the boast of my riper years. When abroad in foreign lands, laboring in the interest of humanity, I have pointed proudly to the land of my birth as an asylum for the oppressed.

I have ever felt to honor the laws and institutions of my country, and, during the progress of my trials, whatever evidence has been introduced, has shown my innocence. But, like ancient Apostles when arraigned in pagan courts, and in the presence of apostate Hebrew judges, though innocent, they were pronounced guilty. So myself, an Apostle who bears witness by virtue of his calling and the revelations of God, that Jesus lives, that He is the Son of God—though guiltless of crime, here in a Christian court I have been convicted through the prejudice and popular sentiment of a so-called Christian nation.

In ancient times the Jewish nation and Roman empire stood *vs.* the Apostles. Now, under an apostate Christianity, the United States of America stands *vs.* Apostle Lorenzo Snow.

Inasmuch as frequent reference has been made to my Apostleship by the prosecution, it becomes proper for me to explain some essential qualifications of an Apostle.

First, an Apostle must possess a Divine knowledge, by revelation from God, that Jesus lives—that He is the Son of the living God.

Secondly, he must be divinely authorized to promise the Holy Ghost: a Divine prin-

ciple that reveals the things of God, making known His will and purposes, leading into all truth, and showing things to come, as declared by the Savior.

Thirdly, he is commissioned by the power of God to administer the sacred ordinances of the gospel, which are confirmed to each individual by a Divine testimony. Thousands of people now dwelling in these mountain vales, who received these ordinances through my administrations, are living witnesses of the truth of this statement.

As an Apostle, I have visited many nations and kingdoms, bearing this testimony to all classes of people—to men in the highest official stations, among whom may be mentioned a president of the French republic. I have also presented works embracing our faith and doctrine to Queen Victoria and the late Prince Albert of England.

Respecting the doctrine of plural or celestial marriage to which the prosecution so often referred, it was revealed to me, and afterwards in 1843 fully explained to me, by Joseph Smith, the Prophet.

I married my wives because God commanded it. The ceremony, which united us for time and eternity, was performed by a servant of God, having authority. God being my helper, I would prefer to die a thousand deaths than renounce my wives and violate these sacred obligations.

The Prosecuting Attorney was quite mistaken in saying "the defendant, Mr. Snow, was the most scholarly and brightest light of the Apostles;" and equally wrong when pleading with the jury to assist him and the "United States of America, in convicting Apostle Snow," and he "would predict that a new revelation would soon follow, changing the Divine law of celestial marriage." Whatever fame Mr. Bierbower may have secured as a lawyer, he certainly will fail as a prophet. The severest prosecutions have never been followed by revelations changing a Divine law, obedience to which brought imprisonment or martyrdom.

Though I go to prison, God will not change His law of celestial marriage. But the man, the people, the nation, that oppose and fight against this doctrine and the Church of God will be overthrown.

Though the Presidency of the Church and the Twelve Apostles should suffer martyrdom, there will remain over four thousand Seventies, all Apostles of the Son of God, and were these to be slain, there would still remain many thousands of High Priests, and as many or more Elders, all possessing the same authority to administer gospel ordinances.

In conclusion, I solemnly testify, in the name of Jesus, the so-called Mormon Church is the Church of the living God; established on the rock of revelation, against which "the gates of hell cannot prevail."

Thanking your Honor for your indulgence, I am now ready to receive my sentence.

At the close of the reading the Court said :

Mr. Snow, the Court desires to ask you for its own information what course you propose to pursue in the future concerning the laws of your country?

MR. SNOW.—Your Honor, in regard to that question: I came into this court—the Prosecuting Attorney had perhaps sixteen witnesses. By the evidence of those witnesses I was

proved guiltless of the charge contained in the indictments. I had three witnesses. Only two of them were able to testify anything in relation to my case. There was not, your Honor, one scintilla of evidence showing that I had cohabited during the last three years, or since the passage of the Edmunds Law, with more than one woman. This your Honor, I believe, would readily concede. Well, I have obeyed that law. I have obeyed the Edmunds Law. Your Honor, I am guiltless, I am innocent. Well, now, your Honor asked me what I am going to do in reference to the future. Having been condemned here and found guilty after having obeyed that law, I am sorry—I regret that your Honor should ask me that question, and, if your Honor please, I should prefer not to answer it.

Court.—The Court, Mr. Snow, from its own knowledge of you and your reputation, which came to the Court before you ever were arraigned here, became and is aware that you are a man of more than ordinary ability. The Court is aware that you are a scholar. The Court is aware that you are naturally a leader of men; that you have a mind well adapted to controlling others, and for guiding others. No matter in what land you might have lived, or in what position you might have been placed, you have those attributes which would naturally have caused people to turn towards you for advice and for counsel. You are a man well advanced in years, and you have been favored by time, because it seems to have touched you but lightly with its finger.

The Court feels that, in view of your past life, of the teachings that you have given to this people, of the advice and counsel, that you desire to stand as an example of one who advocates, and, the jury has found, also practices in violation of the law, the Court must pass sentence in these cases in a way and manner that will indicate to this people that the laws of the land cannot be violated with impunity, even by one as aged, as learned, and as influential as yourself.

The sentence of the Court, therefore, is: That in indictment No. 741 you will be confined in the penitentiary for the period of six months, that you pay a fine of \$300 and the costs of prosecution, and that you stand committed until the fine and costs are paid; and that at the expiration of your sentence in that case, that to you must be given—believing as you state to me you do believe concerning the laws of your country; and recognizing, further, that you are among the very leaders—a leader of leaders among those who advocate that it is right that the law of the land should be violated, it cannot exercise the leniency and the mercy that it would be glad to extend to a man of your age, if it were not for your great influence and your great power for good or for evil (I sincerely believe that Lorenzo Snow could cause this people to obey the laws of the Union, and put an end to the trouble and discord in this Territory, if he chose so to do)—believing that, and being fully aware that you will not do that—aware of indictment No. 742—you will be confined in the penitentiary of Utah for the period of six months and pay a fine of \$300 and the costs of prosecution, and that you stand committed until the fine and costs are paid; and that at the expiration of your sentence in that case, that in indictment No. 743 you will be confined in the penitentiary for the period of six months, and that you pay a fine of \$300 and the costs of prosecution, and that you stand committed until the fine and costs are paid.

You will be remanded into the custody of the United States Marshal.

An appeal was taken to the Supreme Court of the Territory,



*Joseph H Joseph*



and the defendant continued on bail, the amount of which was now increased to fifteen thousand dollars.

The case came before the Supreme Court on the 28th of January. Exhaustive arguments were made by Messrs. Richards and Harkness for the appellant and by U. S. Attorney Dickson for the respondent. On the 6th of February a decision was rendered in one of the cases, that for 1885; Chief Justice Zane voicing the opinion of the court. He decided, contrary to Judge Powers, that Sarah Snow, and not Adeline Snow, was the legal wife of the defendant—for this reason: Adeline was understood to be one of two women whom the defendant had married at the same time; Charlotte, the other woman, being dead. This marriage—with two women simultaneously—was illegal and therefore void. Sarah, the next woman married to Lorenzo Snow, was consequently his lawful wife. Judge Zane went on to say that a lawful marriage afforded strong presumption of matrimonial cohabitation, but besides this Sarah Snow had been recognized by the defendant as his wife. That he had cohabited with Minnie was not denied, and that he visited the other women and held them out as his wives was evident. Such was the gist of the decision, which affirmed that of the court below. Justices Powers and Boreman both concurred, except as to a minor point.

The cases for 1884 and 1883, in which the element of "segregation" figured, were passed upon on the 13th of February. In the former, Judge Boreman delivered the opinion, and in the latter Judge Powers was the mouthpiece of the court.

Judge Boreman took square issue with the Chief Justice as to who was the legal wife of the defendant. There was no evidence, he said, showing that Adeline and Charlotte were married at the same time, and Adeline, and not Sarah, must therefore be regarded as the legal wife. He repeated Judge Zane's argument as to the presumption of matrimonial cohabitation and the admission of cohabitation between the defendant and Minnie Snow. Upon the most important point of all—that of "segregation"—Judge Boreman cited

the decision of a Massachusetts court, which had held that a conviction for maintaining a tenement for the illegal keeping and sale of intoxicating liquors was not a bar to an indictment found at the same session of the grand jury for maintaining the same tenement for the same purpose on the last day named in the first indictment and on divers other days succeeding. This case, he claimed, squarely met the issue and supported the decision of the District Court in the Snow case for 1884. That decision was therefore affirmed.

In this opinion, Judge Powers, of course, concurred, it being in line with his own decision in the District Court.

Judge Zane dissented. There was no evidence, he maintained, that the defendant was ever in Adeline's company. There was merely the testimony that she was reputedly the first wife. It was not sufficient that a man and his lawful wife live in the same neighborhood or in the same city. In conclusion Judge Zane said: "I concur with so much of the opinion of the court as holds that more than one indictment for unlawful cohabitation may be found by the same grand jury for different periods against the same defendant." In other words, Judge Zane sanctioned "segregation," which he was the first to enunciate, but did not sanction "constructive cohabitation," which Judge Powers first advanced.

Judge Powers delivered the court's opinion in the case for 1883. He affirmed that a man was living with his wife if he supported, recognized, and held her out to the world as his wife, whether one roof sheltered them or not, and then declared, in relation to his own charge to the jury, which was one of the grounds of appeal: "*We think that the court below charged the jury correctly.*" Adeline Snow being the defendant's lawful wife, it was presumed that he cohabited with her, and as for Minnie Snow, cohabitation with her was not denied by the defendant. Therefore the judgment of the court below—Judge Powers judgment in Judge Powers' court—was by Judge Powers affirmed. The absurdity of the system, allowing but three Federal Judges to a Territory, one of whom was thus permitted in the Supreme Court to pass upon and approve the decisions ren-



dered by himself in the District Court, was never more glaringly manifest than on this occasion.

Boreman concurred with Powers, but Zane again dissented on the same grounds as before. By a majority opinion, therefore, the decision of the District Court was affirmed.

The questions involved in the Snow cases were deemed of sufficient importance to warrant an appeal to the Supreme Court of the United States. Those questions not only affected the liberty of one man, but the liberties, present and prospective, of hundreds of others. A test case, to carry up for revision the extraordinary rulings of the Utah courts, was imperatively demanded. Apostle Snow's was that test case, and in his person the Mormon people made one more appeal for justice at the bar of the highest tribunal in the land.

First, however, a serious obstacle had to be met and overcome. Owing to the silence of the Poland Law upon the subject of unlawful cohabitation, no special legal provision could be cited upon which to ground action for an appeal. Upon a writ of error, however, granted, much to the general surprise, by Chief Justice Zane,—who had refused such a writ in the Cannon case,—the Snow case was carried to Washington.

A strong effort was made to have it advanced upon the calendar, but without success. This could not be done so long as the defendant retained his liberty. On the 12th of March, Apostle Snow, in order to furnish sufficient grounds for the advancement of his case, surrendered himself a prisoner to the United States Marshal and requested to be taken to the Penitentiary. He was accordingly consigned to "The Pen."

In preceding chapters have been given the names of all or most of the Mormon Elders imprisoned under the operations of the Edmunds Law, down to the time of Apostle Snow's arrest. In addition to those named, the following persons, polygamists, preceded him to the Utah Penitentiary: Henry Gale, Culbert King, James E. Twichell, David M. Stuart, James H. Nelson, William W. Willey,

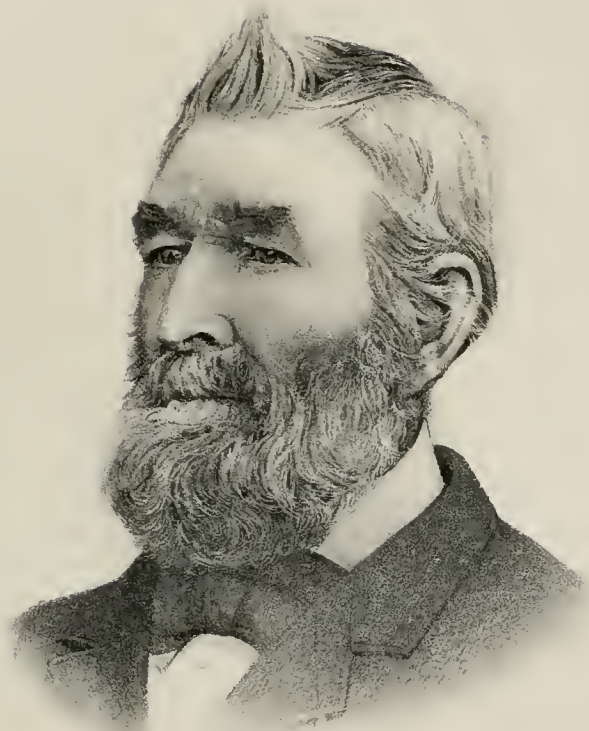
John Penman, Robert Morris, John Bowen, Thomas Burningham, W. G. Sanders, Samuel H. B. Smith, Joseph McMurrin, (father of Joseph W.) Henry Dinwoodey, Amos Maycock, Helm H. Tracy, Charles H. Greenwell, Hugh S. Gowans, William H. Lee, Herbert J. Foulger, John P. Ball, Thomas C. Jones, John Y. Smith, James Moyle, George H. Taylor, O. F. Due, James A. Poulson, Samuel F. Ball, Hyrum Goff, William Jenkins, Frederick A. Cooper and John W. Snell.

Of these, twenty-three were sentenced by Judge Zane, six by Judge Powers, and three by Judge Boreman. There was but one case of polygamy among them; all the others being convicted of unlawful cohabitation. Many pleaded guilty, and not a few supplied the testimony upon which they were convicted. Several of the cases were "segregated."

The next incarceration after that of Apostle Snow was that of Elder Abraham H. Cannon, who furnished the testimony for his own conviction of unlawful cohabitation, and was sentenced by Judge Zane on the 17th of March. The speech made by Elder Cannon just before judgment was pronounced became more or less historic from the use made of it by the Anti-Mormons, who were now urging upon Congress the necessity for more stringent legislation for the overthrow of "polygamy and priestly rule" in Utah. Questioned by Judge Zane as to whether or not he intended to obey the Edmunds Law, the young Elder asked if he might define his position.

COURT.—I don't care for a speech. You might make a few remarks.

ELDER CANNON.—I would like to state, your Honor, that I have always endeavored to keep the laws of the United States because I have been taught by my parents that the Constitution was a sacred instrument. That I have failed in this respect, and now stand before you convicted of the crime of unlawful cohabitation, is due to the fact that I acknowledge a higher law than that of man, which is the law of God. And that law being a part of my religion, sir, I have attempted to obey it. When I embraced this religion I promised to place all that I had, even life itself, upon the altar, and I expect to abide by that covenant which I made. And, sir, I hope the day will never come when I must sacrifice principle, even to procure life or liberty. Honor, sir, to me is higher than anything else upon the earth; and my religion is dearer to me than anything else that I have yet seen. I am prepared, sir, for the judgment of the court.



*A. Love*



The Court commented at length upon the Elder's remarks, and then sentenced him to pay a fine of three hundred dollars and to be imprisoned for a term of six months.

The Judge had scarcely ceased speaking when Mr. R. N. Baskin, who was sitting near, said to the court reporter: "I want a certified copy of that young man's speech. Give it in full, and see that it is certified to properly." The use that Mr. Baskin purposed making of the speech may readily be surmised when it is known that he had recently been chosen by the Gentiles of Salt Lake City to proceed to Washington as their special representative and labor for further Anti-Mormon legislation.

The Elders who next received sentence for unlawful cohabitation were Robert McKendrick, Lorenzo D. Watson, William Grant, Nephi J. Bates, John Bergen, Stanley Taylor, George B. Bailey, Andrew Jensen, Henry W. Naisbitt, and George C. Lambert. Many others were destined to follow them. These were merely the pioneer victims of "the crusade."

## CHAPTER XVIII.

1886.

ARREST OF PRESIDENT GEORGE Q. CANNON—AN ALLEGED ATTEMPT TO ESCAPE—UNITED STATES TROOPS CONVEY THE PRISONER FROM PROMONTORY TO SALT LAKE CITY—HIS BAIL FIXED AT FORTY-FIVE THOUSAND DOLLARS—MRS. MARTHA T. CANNON BEFORE THE GRAND JURY—U. S. ATTORNEY DICKSON ASSAULTED—MORMON WOMEN PROTEST AGAINST MISTREATMENT IN THE FEDERAL COURTS, AND MEMORIALIZE THE PRESIDENT AND CONGRESS AGAINST THEIR IMPENDING DISFRANCHISEMENT—PRESIDENT CANNON FAILS TO APPEAR FOR TRIAL—HIS BONDS FORFEITED—GOVERNOR MURRAY REMOVED—GENERAL M'COOK TRANSFERRED—MARSHAL IRELAND AND JUDGE POWERS GO OUT OF OFFICE—THEIR SUCCESSORS.

THE sensation caused by the arrest and conviction of Apostle Snow had scarcely subsided, when an event took place that eclipsed in interest even that important occurrence. It was the arrest of President George Q. Cannon, the man second in authority in the Mormon Church, who was taken at Humboldt Wells, Nevada, on Saturday, the 13th of February.

The Utah public were first made aware of the capture by the publication of the following telegrams in the Salt Lake Sunday morning papers:

WINNEMUCCA, NEVADA, Feb. 13, 1886.

*To E. A. Ireland, U. S. Marshal:*

Have got Cannon in custody. When will you come after him?

F. M. FELLOWS, Sheriff.

RENO, NEVADA, Feb. 13, 1886.

*W. H. Dickson, Salt Lake City:*

Cannon arrested at Humboldt House. Train just in.

R. H. LINDSAY.

These announcements caused the liveliest rejoicings in Anti-Mormon circles, and a corresponding degree of anxiety and depres-



*Emmeline D. Webb*





sion among the Latter-day Saints. At first, considerable doubt prevailed as to the truth of the telegrams, and surmises were freely expressed by both Mormons and Gentiles that it was a case of mistaken identity. It was known that the most persistent efforts were being put forth for the discovery and apprehension of the Mormon leaders, especially President Cannon, whose residence near Salt Lake City, with other places suspected of harboring him, had been raided by the U. S. Marshal and his deputies only a few days before. At the same time a reward had been offered for information concerning him. It was believed that these incidents, by the same process as that which produced the famous "three black crows," had given birth to the groundless rumors in relation to his arrest,—or at any rate, that the wrong man had been taken.

It was supposed, also—and the supposition was correct—that Presidents Taylor and Cannon, in their exile, kept close company, not only from social considerations, but from necessity; such an arrangement being essential to the proper transaction of the Church business devolving upon the First Presidency; particularly as one of the three—President Smith—was still in a foreign land. The twain werethought to be together, in the house of some trusty friend at or in the vicinity of Salt Lake City. Many, therefore, were slow to believe that President Cannon had been captured, alone, and their incredulity was not lessened by the fact that they were at a loss to conjecture what he could have been doing in Nevada. There, friends, if any, were few; while in Utah they were plentiful. Even the U. S. Attorney, Mr. Dickson, was dubious about the matter, notwithstanding the direct and positive communications received by him.

All during Sunday the suspense continued and it was not until Monday afternoon that uncertainty ceased, and it was definitely ascertained that President Cannon was indeed in custody at Winnemucca. The following telegrams from that point—the first to U. S. Attorney Dickson, the second to Editor Byron Groo, of the Salt Lake *Herald*—served to convince the incredulous:

Cannon consents to come without papers. Will start in a few minutes.

E. A. IRELAND.

George Q. Cannon is arrested. No bail granted. Ireland will start for Salt Lake this afternoon.

O. P. ARNOLD.

It has been stated that a few days before the capture, the family residence of President Cannon—commonly called the “Cannon Farm,” a little beyond the south-western suburbs of Salt Lake City—had been visited by the U. S. Marshal and his men. This raid occurred about eight o'clock Sunday morning, February 7th. It was executed by Marshal Ireland and half a dozen deputies, including Messrs. Vandercook, Franks and Collin. They found no trace of the main object of their search, but served subpoenas upon Mrs. Sarah J. Cannon, Mrs. Martha T. Cannon, Misses Mary Alice and Hester T. Cannon, with others, summoning them as witnesses before the grand jury. The Marshal stated to President Cannon's eldest son, John Q., who came upon the scene and pledged his word for the appearance of the witnesses when wanted, that he had received information that his father was to be home on Saturday night and remain until Sunday evening. Deputy Vandercook added that he had heard President Cannon was sick; a remark that drew from his chief the jocular observation, “Van seems to know a good deal more about his health than his whereabouts.” The posse returned to the city, but subsequently the Marshal sent some of them back to require bonded security for the appearance of the witnesses. It was promptly given.

Simultaneously with this raid, another occurred in the Fourteenth Ward of the city, where the residence of Mrs. Emily Little, sister to the deceased Mrs. Elizabeth H. Cannon, was visited by a party of officers. The inmates were aroused from their Sabbath morning slumbers and hurried off to the U. S. Marshal's office, where they gave bonds for their appearance as witnesses in the case of President Cannon, against whom the U. S. Attorney expected to prove a charge of polygamy. Some of the witnesses were required to furnish bonds in the sum of \$2,500, which security

was doubled as soon as it was learned that the defendant was in custody.

A little after eleven o'clock next morning, the Gardo House, the President's Office, the Tithing Office and the Historian's Office were surrounded and searched by Marshal Ireland and a force of twenty men, including Deputies Greenman, Smith, Mix, Vandercook, Franks, Sprague, Doyle, Hamilton, Parker, McQueen, Cuddihy and Gilson. In the Historian's Office at the time were Apostles Wilford Woodruff, Erastus Snow and Franklin D. Richards. The first-named walked into the street, passing by the officers, apparently unrecognized. Elder Snow remained inside, where he and Elder Richards had a pleasant conversation with Captain Greenman, who entered the building. There was no warrant out for Apostle Snow, and the same was probably true of Apostle Woodruff. The First Presidency not being found, no arrests were made.

While this search was in progress—being conducted in a quiet and orderly manner, in the presence of a gathering crowd which followed the officers from place to place—the following notice, accompanied by a portrait of President Cannon, was posted up at various points:

\$500.00.

I will pay the above reward to any person for information leading to the arrest of George Q. Cannon, against whom an indictment is now pending in the Third District of Utah. The names of any persons giving information will be held in strict confidence.

E. A. IRELAND, U. S. Marshal.

SALT LAKE CITY, Feb. 8, 1886.

This announcement added zest to the operations of the raiders, who, two days later, made a descent upon the Church Farm, south of the city, where they ransacked houses, barns, sheds, stack-yards, etc., in quest of the man whom the U. S. Marshal so much desired to apprehend. It seemed to be the conviction that the capture of President Cannon would solve the polygamy problem and put an end to the crusade; that his imprisonment would be speedily followed by the surrender of the principle and practices involved in the local

controversy. Hence the extraordinary efforts put forth for his apprehension.

At last these efforts were successful. President Cannon, at the request of President Taylor, set out for Mexico, to conclude with the authorities of that country negotiations which had long been pending, for the purchase of lands upon which the fugitive Saints might settle. The accompanying party were Erastus Snow, Samuel H. Hill and Orson P. Arnold. The plan was to board the regular Central Pacific passenger train at some station along its line and after proceeding westward as far as desirable, turn south, and by rail or team reach their destination.

President Cannon had a premonition that something serious was about to befall him, and before starting upon this journey he called his family together and gave them such instructions as he deemed necessary under the circumstances. He then set out for Mexico.

From Salt Lake City to Ogden he and his party occupied a freight car, and from there they were conveyed by team to the vicinity of Willard, Box Elder County, where they boarded the west-bound Central Pacific passenger train. This was on the night of February 12th, four days after the publication of the offer of reward that has been mentioned. As they stepped on the train, it was supposed that a brakeman, holding a lantern near the platform, recognized President Cannon. They entered the sleeper "Santa Clara," the drawing room of which was placed at their disposal.

The night wore away and at eleven o'clock next morning the train reached Winnemucca, about half way across the State of Nevada. Stopping only long enough to take on a few passengers—one of whom was Sheriff Fellows, of Humboldt County—the train sped on sixty miles farther, to Humboldt Wells, where, at about one o'clock, it drew up and most of its occupants alighted for dinner.

The presence of Sheriff Fellows upon this particular train was due to the fact that he had received a telegram from Marshal Ireland, at Salt Lake City, requesting him to arrest George Q. Cannon, who



Jesse Knight



would be found in the sleeper "Santa Clara." To whom Ireland was indebted for this precise information was never known by the public, but the most plausible theory is that the brakeman, suspected of having made the accidental discovery the night before, wired it to Salt Lake City, thus earning the offered reward of five hundred dollars.

As soon as the train stopped at Humboldt Wells, there was a knock upon the door of the drawing room in which the Mormon party were seated. The door was opened and at the threshold stood Sheriff Fellows. He asked for George Q. Cannon; none present answering, he brought in two or three other passengers and requested them to identify him. One of these passengers was Senator William M. Stewart, of Nevada, who had known Mr. Cannon in Congress, but who did not now recognize him, or was unwilling to be the cause of his capture. More knowing, or less shrewd, was a Mormon friend of President Cannon, from Ogden, who was asked to point him out. Evidently not sensing the situation, this man promptly did as the Sheriff desired. An Ogden banker was also instrumental in the identification. The Sheriff then arrested his man and took him from the train.

Mr. Arnold followed, leaving Messrs. Snow and Hill to continue the journey to Mexico. The Sheriff was about to put handcuffs upon his prisoner, but a vigorous protest on Arnold's part, and the expression of willingness on the part of the prisoner to accompany the officer, caused the latter to desist, and he was thenceforth courteous and considerate. The three boarded a freight train and returned to Winnemucca. How Sheriff Fellows telegraphed from that point to Marshal Ireland, informing him of the capture, and how, later in the day, the news was wired from Reno to Mr. Dickson, has been shown.

Marshal Ireland, accompanied by Captain Greenman, set out for Winnemucca on Sunday evening, the day after the arrest. His object was to bring President Cannon to Salt Lake City. The same train carried Alonzo E. Hyde and Samuel Russell, and it reached

its destination Monday afternoon about two o'clock, where it met the east-bound passenger train upon which, ten minutes later, the party was to return. The train from which they alighted was boarded by Mr. Arnold, who, at the request of President Cannon, now proceeded to rejoin Messrs. Snow and Hill.

The party from Salt Lake City found Sheriff Fellows and his prisoner in the hotel at the Winnemucca station. After the first greetings, Marshal Ireland sent to Mr. Dickson the telegram which, with Mr. Arnold's message to Mr. Groo, being published that evening in the *Deseret News*, convinced the public that the arrest was a certainty. A few minutes later the train started, bearing the distinguished prisoner towards the Utah line.

The Marshal had engaged a stateroom for himself and President Cannon, and there the two, with Messrs. Hyde, Russell, Greenman and Fellows, sat conversing during the afternoon and until eleven o'clock at night, when the beds were made and the occupants of the room retired. President Cannon, who had contracted a severe cold, which affected his kidneys, was obliged to arise frequently during the night to take medicine and obtain other relief.

At Lucin, soon after entering Utah, a west-bound train was met and Sheriff Fellows took this opportunity to return to Winnemucca. Mr. Frank J. Cannon came upon this train from Ogden to meet his father. He did not see him, however, as he had retired.

The east-bound train reached Promontory some time after six o'clock Tuesday morning. Just after passing that point an incident occurred regarding which two widely different views were taken. The Mormon view was based upon the account given by President Cannon, the only one competent to state just how the incident occurred. The Gentile view was grounded upon the assertions of the U. S. Marshal and others, who, rejecting that account, could only form suppositions in relation to the matter.

President Cannon's statement was to this effect. Returning from the closet in front of the car to his couch in the stateroom at the rear, the heat so oppressed him that he stepped out upon the plat-



form to inhale the pure morning air. He was scarcely outside the door when a sudden lurch of the train, caused by a curve or some irregularity in the track, threw him off his balance, and, missing the hand-rail he was precipitated from the platform, alighting at full length upon the frozen ground.

The train was going at a rapid rate, and the fall was a severe one. It almost stunned him. His nose was broken, an ugly gash was cut over the left eye, and the entire left side of his face was skinned. His left arm, though not broken, was disabled, and his left thigh also injured. His wounds bled freely. Regaining himself, he did what he could for his own relief, but could only wander about, half dazed, in the vicinity of the spot where he fell. There were no houses near, the accident having occurred while the train was passing over a bleak waste, along the shores of the Great Salt Lake.

Almost immediately after the fall, Marshal Ireland missed his prisoner, and instituted a search for him. While this was going on, the train ran about four miles. When it stopped, and Captain Greenman got off and started back toward Promontory; it then went on to the next station—Blue Creek—ten or eleven miles from Promontory, and there Marshal Ireland and Mr. Hyde left it. Frank Cannon, whose anxiety for his father was even greater than the solicitude of the Marshal—who suspected that his prisoner was trying to escape—continued on to Corinne, where he hired a saddle-horse and rode back to Promontory.

At Blue Creek, a dispatch from Greenman acquainted Ireland with the fact that his deputy had arrived at Promontory with the prisoner, who had accidentally fallen from the train. He had been found near the spot where he fell, and was walking slowly along the track when the officer met him. The injured man presented a ghastly appearance. His face and shirt-bosom were covered with blood, and his overcoat and trousers nearly torn to tatters. The two made their way toward the nearest station—Promontory; being accompanied by Mr. John W. Taylor, a stock-raiser, who was also a

correspondent of the San Francisco *Chronicle*. Mr. Taylor owned a ranch in that vicinity. He was very kind, as was Captain Greenman, and both did all in their power to relieve the sufferings of the injured man.

Marshal Ireland telegraphed to Promontory for an engine, by means of which he and Mr. Hyde, with two deputy marshals, sworn in at Blue Creek, proceeded to rejoin their companions. They found President Cannon in the hotel at Promontory. He was lying upon a lounge with his head bandaged, and Captain Greenman waiting upon him. The mistress of the house was particularly kind and sympathetic toward the gentleman who was now her involuntary guest.

Meantime suspense was again rife at Salt Lake City, where the Marshal and his party had been expected to arrive during the forenoon. A large crowd had gathered at the Rio Grande Western depot to meet the train that came in at 10:45 expecting to catch a glimpse of the prisoner. But they were disappointed. Dispatches soon came explaining the cause of the delay. One sent by Marshal Ireland from Blue Creek, stated that the prisoner had jumped from the train. Another, from Mr. Hyde, gave a brief account of President Cannon's mishap. Still another, from Frank J. Cannon, who had joined his father at Promontory, confirmed Hyde's account of the accident. A number of other telegrams flew over the wires giving both versions of the affair. A second dispatch from Ireland announced that the prisoner was again in custody. There was considerable stir throughout the city, but no excitement—at all events not enough to justify a proceeding that now took place.

We have seen that during the year 1885 two distinct attempts were made to have it appear that the Mormons were in a state of rebellion, and to induce the Government to interfere by armed force in the affairs of the Territory. The first attempt—that over the half-masting of the flag—came to nothing. The second—the one following the McMurrin-Collin assault—brought additional troops to Fort Douglas, and the quartering of a portion of them in the heart



*Cyrus Sanford*



of Salt Lake City. The arrest of President Cannon, and his alleged attempt to escape, furnished the Anti-Mormons with another opportunity to make capital for their cause. Circulating the report that the Mormons intended to take him by force from the custody of the officers, they induced Governor Murray, or someone equally willing to be induced, to make a requisition for troops to assist the U. S. Marshal in bringing home his prisoner. Marshal Ireland was charged with projecting the movement, but denied the accusation. Nevertheless, the Associated Press agent, one of the staff of the Salt Lake *Tribune*, telegraphed the statement that the request for the troops came from Marshal Ireland, and that Governor Murray endorsed it. At all events, the requisition was made, and the military authority at Fort Douglas honored it by sending a body of soldiers to aid the U. S. Marshal in bringing home his sick and helpless prisoner.\*

Captain Pinney, of the provost guard, with Lieutenant Shaw and twenty-six privates, was detailed for the service. They left Salt Lake City on a special train at twenty minutes past six o'clock Tuesday evening. Their arrangements were so secret that scarcely anyone else knew what was afoot until the soldiers marched in to the Union Pacific depot and boarded their train, consisting of two cars and an engine. Deputy Marshal Vandercook, Dr. Potter and two newspaper reporters were about the only civilians that accompanied the troops on their journey.

At Promontory a rumor prevailed, early in the evening, that the soldiers were coming, but the report was not credited. Marshal Ireland had promised the friends of President Cannon that if they

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\* A writer in the Salt Lake *Herald* showed that the use of the troops under such circumstances was not only an abuse of authority, but a violation of congressional law; that these soldiers, who were of the regular army, and not state militia subject to the call of the Governor, could only legally be ordered out by the President of the United States, in answer to an application from the Territorial Legislature, which was then in session: and that in procuring this unauthorized use of the military, someone had committed a crime, the punishment for which was a fine of ten thousand dollars and imprisonment for a term of two years.

would guarantee his safe delivery at Salt Lake City, he should not be removed until Wednesday morning, and had denounced as infamous a proposition to rush the wounded man through to Ogden on an engine. But the Marshal—naturally courteous and accommodating—was “in the hands of his friends,” and those friends were enemies to President Cannon, or to the cause that he represented. The Marshal was persuaded that an attempt would be made to rescue the prisoner. He told the latter that he had received information to that effect, and that he feared an outbreak at Ogden; whereupon President Cannon telegraphed to friends in that city, deprecating any possible movement of that character, and was answered by prominent citizens that everything was quiet at the Junction City, and that there was no danger of any tumult there.

This assurance made no alteration in the plans relative to the troops now on their way to Promontory. They arrived there at half past ten o'clock Tuesday night. A clamor was raised for an immediate return, but President Cannon protested, reminding Marshal Ireland of his promise that he should not be removed till morning. The physicians—Dr. Carnahan, of Ogden, who was exceedingly kind, and Dr. Potter, of Salt Lake City,—impressed with the gravity of the prisoner's condition, favored a postponement of departure, and the Marshal finally yielded. The hour set for leaving Promontory was four o'clock Wednesday morning.

President Cannon was carried into Bishop John Sharp's special car, which had been sent for him, and the entire party then boarded the train. Shortly before it started, Captain Pinney and his men filed into the presence of the prisoner, who was reclining upon an improvised couch, and all others, excepting the U. S. Marshal, his deputies, and Mr. Frank J. Cannon, were ordered to vacate the car. A physician was to be allowed to enter when necessary. The prisoner's friends, who had been promised that he should not be annoyed by the presence of the troops, protested to Marshal Ireland, who told them that Captain Pinney had charge of the train, and that he himself was powerless in the premises. The Captain, appealed to,

placed the responsibility upon the Marshal, who, again approached, reiterated his former statement. President Cannon asked him if the military had superseded the civil power, but received no satisfactory answer.

After leaving Promontory, the window-blinds were tightly closed, nobody being allowed to look out, and none but officers permitted to pass in or out of the car. Just before reaching Ogden the soldiers were ordered to load their guns, the phantom of the rumored "outbreak" still preying upon the minds of their superiors. The needless act of precaution was duly performed.

All was quiet at the Junction City. After a delay of half an hour, the train sped on its way. As an additional act of precaution, everybody, excepting the soldiers, the civil officers, the physicians, the prisoner and his son, had been put off at Ogden. The press reporters mounted the engine, from which Captain Pinney promptly dislodged them, but were finally permitted to ride in a rear car with the main body of the troops. They were not allowed to step out upon the platform during the remainder of the journey.

The Ireland-Pinney special reached Salt Lake City at 7:45 a. m. The soldiers alighted first, deporting themselves as if they expected resistance; but nobody interfered with them. Through the grim and glittering files, the bandaged if not bleeding prisoner was assisted into a hack, and driven to the U. S. Marshal's office. Being very faint, he ascended the stairs leading to the Marshal's office with difficulty. He was permitted to recline upon a mattress on the office floor.

Judge Zane and U. S. Attorney Dickson were now sent for and on their arrival the question of the prisoner's bail was settled. Mr. Dickson wanted it placed at twenty-five thousand dollars. He gave as his reasons for this request, (1) that the prisoner had attempted to bribe an officer at Winnemucca;\* (2) that subsequently he had

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\* Sheriff Fellows charged that Mr. Arnold had approached him in the prisoner's behalf, offering money for his liberty.

tried to escape from the custody of Marshal Ireland;\* and (3) that he was a high Church dignitary, wielding immense influence over the Mormon people.

Mr. F. S. Richards, the prisoner's attorney, protested against this exorbitant demand as violative of the spirit and letter of the Constitution. Judge Zane, however, granted Mr. Dickson's request, and John Sharp and Feramorz Little were accepted as sureties for the sum specified.

These bonds being filed, two warrants, issued by U. S. Commissioner Critchlow upon complaints made by Mr. Dickson, were read to the prisoner by Deputy Marshal Smith, who knelt upon the floor and whispered the contents of the documents into the sick man's ear. He was charged with unlawful cohabitation from March to July, and from July to December, 1885, his case having been "segregated" into periods of four and six months, and separate indictments found accordingly. On each of these warrants a bond of ten thousand dollars was required. Mayor Armstrong and General H. S. Eldredge were accepted as sureties. These bonds were also filed, and President Cannon, under bail in the enormous sum of forty-five thousand dollars, for an alleged offense for which a fine of three hundred dollars and six months' imprisonment was the maximum legal penalty, was then permitted to go at large. He was taken to his home southwest of the city and given into the care of his family, who, with the assistance of Doctors S. B. Young, W. F. Anderson and J. F. Hamilton, attended to his injuries and nursed him back to health.

A few days after his return, one of his sons, a lad of sixteen years, created some excitement by assaulting the person of U. S. Attorney Dickson. The incident had no particular connection with

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\*The suspicion that President Cannon had tried to escape was partly based upon the fact that from the pocket of his overcoat, after his fall from the train, were taken a loaf of bread and a flask of water, procured for him by his friend, O. P. Arnold, before separating from him at Winnemucca. The prisoner explained that his purpose in obtaining the bread was that he might remain inside the car all along the way, and not be compelled to face the curious crowds always loitering around railroad eating stations. The flask was used for taking medicine.



President Cannon's arrest; the boy's motive being to resent what he deemed an insult to one of his father's wives, who had been required to answer before the grand jury questions relating to her personal condition that were considered insulting and indecent. The questions were propounded by Mr. Dickson. Mrs. Cannon refused to answer them and was adjudged in contempt, but Judge Zane suspended sentence. Two days later—February 17th—she was again before the grand jury, when, by the advice of her husband, she answered the questions. She was so overcome by the painful ordeal that she suffered an attack of nervous prostration, and for several days was quite ill. It was this incident that caused young Hugh J. Cannon, naturally an amiable and mild-tempered boy, to call Mr. Dickson to account. The assault occurred on the evening of February 22nd, in the Continental Hotel. Mr. Dickson was struck twice in the face with the fist of his youthful assailant, who then fled from the scene and proceeded to the City Hall where he gave himself up as the one who had done the striking. Two others of the party of young men who were in the hotel and standing near when the trouble began, were arrested by U. S. deputy marshals and next day, with another, who had by this time been gathered in as an accomplice, were arraigned before a U. S. Commissioner on the charge of conspiracy. Hugh paid his fine in the police court for assault and battery, taking on himself the entire responsibility, and then disappeared, having been successful in evading service of the conspiracy warrant. Subsequently the latter charge was dismissed, but the two defendants with whom the police magistrate had been allowed no opportunity to deal—since the arrest and prosecution were in the hands of the U. S. officers—were held and indicted by the grand jury for assault and battery. The cases came before Judge Zane for trial early in May. To relieve all others concerned, Frank Cannon, who was one of the defendants, pleaded guilty to the charge, was fined one hundred and fifty dollars, and sentenced to three months' imprisonment in the county jail. The charges against the other boys were dismissed.

The incident which had given rise to these sensational proceedings, namely, the catechising of Mrs. Cannon before the grand jury, was destined to bear fruit of quite a different character to that described. On Saturday, the 6th of March, a mass meeting of Mormon women convened at the Salt Lake Theater, to protest against what they deemed the mistreatment of their sex in the Federal courts. It was a very enthusiastic gathering. Ringing speeches were made by representative women from various parts of Utah, who, with their sisters *en masse*, authorized the framing and adoption of a memorial, which was carried to Washington by Mrs. Emmeline B. Wells and Dr. Ellen B. Ferguson. The reader will better appreciate the force of the document—a portion of which is here presented—by remembering that Congress at this time was considering a measure called “the new Edmunds bill”—the nucleus of the Edmunds-Tucker Law—which proposed to disfranchise the women of Utah. Referring to the practices permitted under the Edmunds Law, the memorial said:

In order to fasten the semblance of guilt upon men accused of this offense [unlawful cohabitation], women are arrested and forcibly taken before sixteen men and plied with questions that no decent woman can hear without a blush. Little children are examined upon the secret relations of their parents, and wives in regard to their own condition and the doings of their husband. If they decline to answer, they are imprisoned in the Penitentiary as though they were criminals. A few instances we will cite for your consideration.

The cases of Annie Gallifant, Belle Harris, Nellie White, Elizabeth Ann Starkey and Eliza Shafer were then referred to, and finally the case of Mrs. Martha T. Cannon, concerning which, and other incidents of the crusade, the document had this to say:

On February 15, 1886, Mrs. Martha T. Cannon was brought into the Third District Court, and the grand jury complained that she would not answer certain questions, among them the following: “Are you not now a pregnant woman?” “Are you not now with child by your husband, George Q. Cannon?” On still declining to answer, the Court adjudged her guilty of contempt, and pending sentence, she was placed under bonds of \$2,500, which were subsequently raised to \$5,000.

On March 2, 1886, Miss Huldah Winters was arrested by Deputy Marshal Vandercook, at her home in Pleasant Grove, forty miles distant, no charge being preferred against



Sincerely yours  
Ellen B. Ferguson



her, but it was suspected that she was a plural wife of George Q. Cannon. She was brought to Salt Lake City and conducted to the court house, where she was required to furnish bonds for \$5,000 for her appearance from time to time as she might be wanted.

Under the suspicion that any woman or young lady is some man's plural wife, she is liable at any time to be arrested, not merely subpœnaed, but taken by force by deputy marshals and brought before a grand jury and examined and brow-beaten and insulted by the Prosecuting Attorney or his minions. But this is not all. In defiance of law and the usages of courts for ages, the legal wife is now compelled to submit to the same indignities.

On February 20, 1886, in the Third District Court, in the second trial of Isaac Langton, upon whom the prosecution had failed to fasten the slightest evidence of guilt, Prosecuting Attorney Dickson exclaimed: "If the Court will allow me, I would like to call Mrs. Langton" (defendant's legal wife). After a strong protest from the attorneys for the defendant, the Court permitted the outrage, and against her and her husband's consent she was compelled to testify for the prosecution: the evidence, however, completely exonerating the husband, who was discharged.

But this has now been set up as a precedent, and within the past few days a legal wife has been taken before the grand jury, as many have been before, who refused to give evidence, but this time was compelled to answer the questions propounded by the public prosecutor against the lawful husband.

We also direct your attention to the outrages perpetrated by rough and brutal deputy marshals, who watch around our dooryards, peer into our bedroom windows, ply little children with questions about their parents, and, when hunting their human prey, burst into people's domiciles and terrorize the innocent.

On January 11, 1886, early in the morning, five deputy marshals appeared at the residence of William Grant, American Fork, forced the front door open, and, while the inmates were still in bed, made their way up stairs to their sleeping apartments. There they were met by one of the daughters of William Grant, who was aroused by the intrusion, and, despite her protestations, without giving time for the object of their search to get up and dress himself, made their way into his bedroom, finding him still in bed and his wife *en dishabille* in the act of dressing herself.

Early on the morning of January 13, 1886, a company of deputies invaded the peaceful village of West Jordan, and under pretense of searching for polygamists, committed a number of depredations. Among other acts of violence they intruded into the house of F. A. Cooper, arrested him and subpœnaed his legal wife as a witness against him. This so shocked her that a premature birth occurred next day, and her system was so deranged by the disturbance that in a few days she was in her grave.

February 23, 1886, at about 11 o'clock at night, two deputy marshals visited the house of Solomon Edwards, about seven miles from Eagle Rock, Idaho, and arrested Mrs. Edwards, his legal wife, after she had retired to bed, and required her to accompany them immediately to Eagle Rock. Knowing something of the character of one of the deputies, from his having visited the house before, when he indulged in a great deal of drinking, profanity and abuse, she feared to accompany them without some protection, and requested a neighbor to go along on horseback while she rode in the buggy with

the two deputies. On the way the buggy broke down and she, with an infant in her arms, was compelled to walk the rest of the distance—between two and three miles. They could have no reason for subpoenaing her in the night, and compelling her to accompany them at such an untimely hour, except a fiendish malice and a determination to heap all the indignities possible upon her because she was a “Mormon” woman, for she never attempted to evade the serving of the warrant, and was perfectly willing to report herself at Eagle Rock the next day. She was taken to Salt Lake City to testify against her husband.

On February 23, 1886, Deputy Marshal Gleason and others went to Greenville, near Beaver, Utah. The story of their conduct is thus related by the ladies who were the subjects of their violence:

MRS. EASTON'S STATEMENT.

About 7 a. m., deputies came to our house and demanded admittance. I asked them to wait until we got dressed, and we would let them in. Deputy Gleason said he would not wait, and raised the window and got partly through by the time we opened the door, when he drew himself back and came in through the door. He then went into the bedroom: one of the young ladies had got under the bed, from which Gleason pulled the bedding and ordered the young lady to come out. This she did, and ran into the other room where she was met by Thompson. I asked Gleason why he pulled the bedding from the bed, and he answered: “By G—d, I found Watson in the same kind of a place.” He then said he thought Easton was concealed in a small compass, and that he expected to find him in a similar place, and was going to get him before he left.

MISS MORRIS' STATEMENT.

Deputy Gleason came to my bed and pulled the clothing off me, asking if there was anyone in bed with me. He then went to the fire-place and pulled a sack of straw from there and looked up the chimney. One of them next pulled up a piece of carpet, when Gleason asked Thompson if he thought there was anyone under there. Thompson said “No,” and Gleason exclaimed, “G—— d—— it, we will look any way!” They also looked in cupboards, boxes, trunks, etc., and a small tea chest, but threw nothing out.

WILLIAM THOMAS' STATEMENT.

The deputies called at our place about daybreak, and came to my window and rapped. I asked who was there, but received no answer. They then tried to raise the window, when I called again, and they said they were officers. I asked them to wait until I was dressed, but they said no, or they would break in the door. I told them they had better let that out, and they went around to mother's door, which was opened, and father was summoned. The deputies next went to the bed of Mrs. Elliotts and subpoenaed her. Gleason said, with a frightful oath, that he knew there was another woman in the house, and searched in boxes, trunks, etc.

These are a few instances of the course pursued towards defenseless women, who are not even charged with any offense against the law. We solemnly protest against these desecrations of our homes and invasions of our rights. We are contented with our lot when left unmolested, and would enjoy the peace of quiet homes, and society of our





Wm Douglass  
Age 73 years





*Agnes C Douglass*



husbands and children, and the blessings that only belong to God-fearing families trained to habits of thrift, temperance, self-restraint and mutual help, if it were not for these outrages which are committed in the name of law, under the false pretense of protecting home and preserving the family.

We learn that measures are in contemplation before your honorable bodies to still further harass and distress us. We protest against the movement to deprive us of the elective franchise, which we have exercised for over fifteen years. What have we done that we should thus be treated as felons? Our only crime is that we have not voted as our persecutors dictate. We sustain our friends, not our enemies, at the polls. We declare that in Utah the ballot is free. It is entirely secret. No one can know how we vote unless we choose to reveal it. We are not compelled by any men, or society, or influence to vote contrary to our own free convictions. No woman living with a bigamist, polygamist, or person cohabiting with more than one woman, can now vote at any election in Utah. Why deprive those against whom nothing can be charged, even by implication, of a sacred right which has become their property?

We ask for justice. We appeal to you not to tighten the bonds which are now so tense that we can scarcely endure them. We ask that the laws may be fairly and impartially executed. We see good and noble men dragged to jail to linger among felons, while debauched and polluted men, some of them Federal officers who have been detected in the vilest kind of depravity, protected by the same court and officers that turn all their energies and engines of power towards the ruin of our homes and the destruction of our dearest associations. We see pure women forced to disclose their conjugal relations or go to prison, while the wretched creatures who pander to men's basest passions are left free to ply their horrible trade, and may vote at the polls, while legal wives of men with plural families are disenfranchised. We see the law made specially against our people so shamefully administered that every new case brings a new construction of its meaning, and no home is safe from instant intrusion by ruffians in the name of the law. And now we are threatened with entire deprivation of every right and privilege of citizenship, to gratify a prejudice that is fed on ignorance and vitalized by bigotry.

We respectfully ask for a full investigation of Utah affairs.

\* \* \* \* \*

MRS. SARAH M. KIMBALL,  
 MRS. M. ISABELLA HORNE,  
 MRS. ELMINA S. TAYLOR,  
 DR. ROMANIA B. PRATT,  
 MRS. JANE S. RICHARDS,  
 MRS. H. C. BROWN,  
 MRS. MARY PITCHFORTH,  
 MISS IDA I. COOK,  
 MISS IDA COOMES,  
 MRS. MARY JOHN,  
 MRS. AGNES DOUGLAS,  
 MRS. EMILY S. RICHARDS, Sec'y.  
 Committee.

The trial of President George Q. Cannon had been set for Wednesday, March 17th, at ten o'clock a. m. The hour arrived, but the man was not forthcoming.

As soon as the courtroom was open that morning, people began crowding in to witness the spectacle of the "second man in Mormon-dom" arraigned for trial upon the first of several indictments which had been found against him. Ten o'clock had not struck when the interior of the place was crammed to suffocation. The fear of an attempted rescue—the nightmare of Anti-Mormon dreams ever since the defendant's arrest—still haunted the minds of the U. S. Marshal and his associates. To guard against such an issue each person, as he entered the building—and but one was permitted to enter at a time—was carefully scanned by deputy marshals stationed at the doors, who satisfied themselves that no weapons were carried by those whom they allowed to pass.

The opening incident of the day was the passing of sentence upon President Cannon's son Abraham, an account of which has already been given.

That matter disposed of, the case of the United States *vs.* George Q. Cannon was called, and the defendant's attorneys—F. S. Richards, Le Grand Young, Ben Sheeks and J. L. Rawlins—were asked if they were ready to proceed. The defendant not having appeared, a few moments delay was requested. But Mr. Dickson, who seemed to take it for granted that President Cannon did not intend to appear—and it was a perfectly correct surmise—impatiently demanded that the witnesses in the case be called. The following persons answered to their names: Martha T. Cannon, Emily Little, Mary Little, Sarah J. Cannon, Ella Little, Georgiana Little, Abraham Little, Mary Alice Cannon, Hester T. Cannon and Sarah Ann Butterworth. The Court then ordered that the defendant's name be called, and "George Q. Cannon" was shouted three times by the bailiff.

"Call the securities," exclaimed Mr. Dickson. There was no response.

Again the defendant's attorneys interposed, stating that they

knew nothing of the whereabouts of their client, who lived out of town and possibly might have been delayed by the bad weather and the condition of the roads. They suggested a continuance until the afternoon. Mr. Dickson opposed the suggestion and insisted that the bonds be declared forfeited. The names of the sureties, John Sharp and Feramorz Little, were then called thrice, but no one replied. After a few minutes' discussion, the Court granted Mr. Dickson's demand for the forfeiture of the bond of \$25,000, with the proviso that if the defendant came into court at 2 p. m.—to which hour an adjournment was taken—the decree would be rescinded.

At the appointed hour the court reconvened, and the name of George Q. Cannon was again called thrice. Again there was no response. The forfeiture previously decreed was therefore allowed to stand, and the amount in question was required of the sureties. Messrs. Sharp and Little promptly paid it.

A few days later the second set of bonds—those for \$20,000—pledged for the defendant's appearance before Commissioner Critchlow, were also declared forfeited, and Mayor Armstrong and General Eldredge, the sureties, were requested to turn over that sum. Unlike Messrs. Sharp and Little—whose promptitude in paying the former amount, while commended by some, was criticised by others as hasty—they decided to test in the courts the question of "excessive bail," and consequently declined to accede to the peremptory demand.\*

The denouement in the Cannon case was a source of much chagrin to the U. S. Attorney and his associates, who vented their feelings in the fulmination of charges of cowardice and perfidy on the part of the defendant. His escape was to them a disappointment

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\* The necessary legal steps were taken by the representatives of the Government to collect the sum involved—\$20,000—and the case passed through the Utah courts and was taken to Washington. Through the kind offices of influential friends at the capital, President Cannon succeeded eventually in getting this case dismissed, and in procuring congressional action restoring to him the amount—\$25,000—paid over by his bondsmen.

for which the forfeiture of his bond was no adequate compensation.

The Mormons were divided in their views. Many at first regretted the occurrence; for it was supposed that President Cannon's failure to appear for trial would render the situation of his brethren who might be arrested thereafter exceedingly disagreeable. The "tremendous moral effect" that would have followed his conviction and imprisonment was also a theme much dwelt upon. Now, it was argued, it would be more difficult to convince the world of the sincerity of the Mormon leaders, and those arraigned in future need expect no mercy. Bail would be refused them, or placed at such a figure that scarcely any would be able to procure it; and if President Taylor should be captured, one hundred thousand dollars would not suffice to secure his liberation pending trial. Such were the arguments and reasonings afloat.

These strictures, as a matter of course, were more or less painful to the person chiefly concerned; a man who naturally desired, next to the approval of his conscience, the good will of his people. That he had that approval—having won it by the very act for which he was being criticised—was doubtless a great solace to him under the circumstances. He knew, though the public did not, that in failing to appear for trial, he had simply followed the advice of his leader, President Taylor, whose possible fate, as the result, formed one of the main arguments of the censors. This fact soon transpired, and it was not long before most of those who disapproved of what President Cannon had done were zealously justifying his course.

They now argued in this vein: George Q. Cannon was a foredoomed man, and a trial in his case, with the feelings that prevailed against him, would be a mere form, an empty farce; more so, if possible, than in the case of Apostle Snow, then behind bolts and bars, convicted without evidence, and sentenced three times for one alleged offense. President Cannon had been singled out as a special object for attack. A price had been put upon his head, he had been

hunted and hounded until caught, brought back in triumph by a military posse, placed under excessive bonds, his family and friends compelled to give heavy security for their appearance as witnesses against him, indictments multiplied, and every effort made to convince him and the public that his was a peculiar case and that no pains would be spared to cause him as much suffering as possible. It was said to be the intention, as soon as the Utah courts were done with him, and he had served out his "segregated" sentences—if he lived to serve them out—to turn him over to the authorities of Nevada, to be prosecuted in that State for attempted bribery, as a co-defendant with Orson P. Arnold. With such a prospect before him, his friends maintained that he had done perfectly right in forfeiting his bond, particularly as that was the advice of his superior in authority. The bond was a heavy one, and the loss to him correspondingly severe; but if he chose to pay that much for his personal freedom, it was nobody's business but his own. No principle had been surrendered, no covenant broken, by his failure to appear; that alternative having been left open to him at the time his bond was given. It was not necessary that all the leading men of the Church should go to prison to prove their integrity. Some could serve the cause better outside, some better inside, the Penitentiary. As to the charge of cowardice, President Cannon maintained that, foreseeing, as he did, how his act would be viewed, it required far more courage to jump his bond, than it would have required to go to prison, as he afterwards did, for the sake of his religion.

The Anti-Mormons, sorely chagrined over the escape of the man whom they had marked as their chief victim, were given another bitter cup to drink about this time. It was the removal of Governor Murray, whose resignation was demanded a few days after President Cannon's arrest. In fact, it was asked for on the very day that the troops started for Promontory to secure the person of the prisoner. The correspondence upon the subject was published the day that the posse returned in triumph. It was as follows:

DEPARTMENT OF THE INTERIOR, WASHINGTON, D. C.

March 16, 1886.

*Governor Eli H. Murray, Salt Lake City, Utah Territory.*

Referring to your message to me, delivered by Justice Harlan soon after I became Secretary of this Department, to the effect that your resignation would be tendered whenever the President desired, the President directs me to say that he will be pleased now to have your resignation as Governor of Utah Territory.

L. Q. C. LAMAR, Secretary.

SALT LAKE CITY, March 16, 1886.

*Hon. L. Q. C. Lamar, Secretary of the Interior, Washington, D. C.*

Your communication of today just received. Hon. R. N. Baskin, delegate chosen by the non-Mormons of Utah on yesterday, will proceed to Washington immediately, and will, on arrival, place my resignation in the hands of the President.

ELI H. MURRAY.

To arrive at the reasons for Governor Murray's removal—for removal it virtually was—one need only scan the record of his acts, official and otherwise, during his occupancy of the executive chair of this Territory. The fact that he was a Republican, and the national Administration Democratic, counted nothing against him. President Cleveland, in pursuance of his policy of "Civil Service Reform," kept many Republicans in power; as instance Judge Zane, U. S. Attorney Dickson and others. Governor Murray himself had continued in office for over a year after Cleveland's inauguration, and might have remained undisturbed, and even been reappointed, but for his radical course, which rendered him, in the opinion of the President, an unsafe man to be entrusted with the control of so important a commonwealth.

The act that led immediately to the Governor's displacement grew out of the antagonism existing between him and the Legislature. His insistence upon his right to appoint certain Territorial officers—a right denied by the Legislature—and his refusal, on account of this opposition, to approve bills passed by the people's representatives for the people's benefit, are themes that have been fully treated in former chapters. It is sufficient to say here that this antagonism was renewed during the Legislative session of 1886, which opened



on the 11th of January and closed on the 12th of March. As a result of the disagreement between the two branches of the Territorial government, some very important measures failed to become law, being either ignored or vetoed by the Executive. Twenty-five bills were thus defeated, some providing as follows: for bail pending appeal, for the payment and selection of jurors, for the regulation of elections, for the re-apportionment of the Territorial representation, for a Territorial Reform School, for aid to the University and the Insane Asylum, and for a Territorial Board of Equalization. The reason that some of these bills did not receive the Governor's approval is apparent from their titles. They would have put an end to much of the harsh procedure in the Federal courts, thus weakening the cause of the crusade. Finally, Murray vetoed the general appropriation bill, and it was this act that caused his official decapitation.

Immediately after the adjournment of the Legislature, the Governor issued a proclamation appointing to office the following named persons: Arthur Pratt as Territorial Auditor of Public Accounts and Recorder of Marks and Brands, Bolivar Roberts as Territorial Treasurer, and Parley L. Williams as Territorial Superintendent of District Schools. These positions were held, respectively, by Nephi W. Clayton, James Jack and L. John Nuttall, each of whom had been elected, according to law, and commissioned by Governor Murray himself. As shown, he claimed the right to appoint these officers by virtue of section seven of the Organic Act, and the people claimed the right to elect them by virtue of a law passed by the Legislature and approved by Governor Emery in 1878. Governor Murray was so anxious to have his claim recognized that he had offered, if the Legislative Council would confirm his appointees, to nominate the men already in office. The Council would not agree to this; and hence the proclamation.

Suits for the possession of the offices were at once planted in the Third District Court, which tribunal, with the Supreme Court of the Territory, in due time decided in favor of the Governor's

appointees. The cases were then appealed to the Supreme Court of the United States.\*

Three days after the issuance of the proclamation appointing Messrs. Pratt, Roberts and Williams to the offices named, and five days after the veto of the general appropriation bill, came the message from Secretary Lamar, requesting Governor Murray's resignation. The reasons for the request were thus stated in a special dispatch to the Salt Lake *Herald*:

WASHINGTON, D. C., March 17.

The causes for Governor Murray's removal are that his general conduct has for some time been unsatisfactory to the President. His veto of the general appropriation bill was the last straw that broke the camel's back. \* \* \* The President regards Murray's efforts to coerce legislation as unjustifiable, and his attempts to appoint officers by proclamation as revolutionary. He remembered, besides, that he had been twice deceived by Murray on the "Mormon uprising."

A special to the Salt Lake *Tribune*, and another to the New York *Herald*, confirmed this message in every essential particular.

On the evening of the 23rd of March a grand reception was given at the Walker Opera House, by leading Gentiles of Salt Lake City and other parts in honor of the deposed Executive. His praises were sounded in speeches by Messrs. C. W. Bennett, William M. Ferry, Chief Justice Zane, Rev. T. C. Iliff, Chaplain Jackson, of Fort Douglas, and Henry W. Lawrence. A committee consisting of Messrs. Lawrence, Ferry, J. M. Goodwin, C. S. Varian and W. S. Godbe reported resolutions, which were adopted, approving the Governor's course, and the action of the non-Mormon citizens, taken on the 15th of March, appointing Mr. Baskin their special representative at Washington. After the meeting many of those present repaired to the Governor's residence, where other speeches were made and a

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\*The Edmunds-Tucker law, enacted in 1887, vacated the office of Territorial Superintendent of District Schools and vested its powers in a Commissioner of Schools, to be appointed by the Supreme Court of Utah. This removed Messrs. Nuttall and Williams, with their part of the question, out of the controversy. The other litigants contested the matter to the end.

general jubilation indulged in, principally over the past achievements of the Executive. U. S. Attorney Dickson credited Governor Murray with the success of the crusade; but he put aside the proffered crown, insisting that it be placed upon the brows of Messrs. Zane, Dickson and Ireland.

The removal of Governor Murray was supplemented by the transfer to another military post of General McCook, the commander at Fort Douglas, who was ordered to Fort Leavenworth, Kansas, and placed in charge of the Military School of Application at that point. This meant that President Cleveland was weary of the Anti-Mormon sensations in which the troops of Fort Douglas had recently figured, and, in a way not to humiliate the gallant soldier—who subsequently admitted that some of his acts in Utah were mistakes\*—took occasion to let him know that better things were expected of him.

U. S. Marshal Ireland was permitted to serve out his term, but was then succeeded by U. S. Marshal Frank H. Dyer, who received his commission on the 16th day of June. Mr. Dyer was an active and enterprising business man. He was from the South, but had resided for several years in Utah. At the time of his appointment he was a contractor for hauling the ores of the mines near Park City.

In August Judge Powers retired from the service of the Government. The Senate of the United States had refused to confirm his appointment, and in April of this year it had been withdrawn. His successor was Hon. Henry P. Henderson of Michigan. Judge Powers remained in Utah, practicing law, and taking up a permanent residence at Salt Lake City. A brilliant orator and a skilled politician, he rendered signal service to the Liberal cause during the remaining years of its existence.

Judge Henderson may be classed with the conservative Federal officials of his period. Urbane and gentlemanly in deportment, he

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\* Our authority for this statement is Colonel David McKenzie, who conversed with General McCook during the latter's visit to Utah several years later.

pursued the even tenor of his way, and in spite of some of his decisions, which the Mormons deemed harsh, won the respect and esteem of the people generally.



*J. K. Sliff*



## CHAPTER XIX.

1886-1887.

GOVERNOR WEST ARRIVES—THE SNOW CASE BEFORE THE SUPREME COURT OF THE UNITED STATES—DISMISSED FOR WANT OF JURISDICTION—GOVERNOR WEST VISITS APOSTLE SNOW AND OTHER MORMON ELDERS IN THE PENITENTIARY—A CONDITIONAL OFFER OF AMNESTY—THE OFFER DECLINED—THE GOVERNOR RECOMMENDS FURTHER ANTI-MORMON LEGISLATION—THE "LOYAL LEAGUE" ORGANIZED—THE "BUSY B'S" AND THEIR WORK AT WASHINGTON—KATE FIELD'S "MORMON MONSTER"—DELEGATE CAINE'S EFFICIENT SERVICE—PROGRESS OF THE CRUSADE—THE BASSETT CASE—OTHER INCIDENTS OF THE "TIME OF TROUBLE."

UTAH'S new Governor was Hon. Caleb W. West, of Kentucky. He was a Democrat, had been a Confederate officer, and was prominent in legal and political circles in his native State. At the time of his appointment to this Territory, he was County Judge of Harrison County. He enjoyed the friendship of such men as John G. Carlisle, Senator Blackburn and Governor McCreary, and it was through their influence that he became Governor of Utah.

To govern one of the Territories had been for some time his main political desire, which he took occasion to express to Mr. Carlisle, then Speaker of the House of Representatives. This was after the great Democratic victory of 1884, which elevated Cleveland to the Presidential chair. Mr. Carlisle favored the ambition of his friend, and the two being in Washington, called upon the President at the White House. The subject of Utah came up, and Governor Murray's conduct claimed its share of consideration. The President, for reasons already stated, was loth to displace any official appointed by his predecessor. Murray gave great satisfaction to the majority of the Gentiles, and had not yet worn out the patience of the President by his radical and sensational course. Cleveland said little to encourage Judge West at that time. The latter, it should be under-

stood, was not seeking to undermine Governor Murray; but knowing that he was liable to be removed, made known his desire to succeed him whenever the President should see fit to institute a change. His application was endorsed by the entire congressional delegation of Kentucky, and by other prominent men of that State.

Judge West was in Washington after the second alleged "Mormon uprising"—that following the McMurrin-Collin episode, which was used by Governor Murray and his friends to induce the sending of additional troops to Utah. He was told by Congressman Breckinridge—who knew how the President felt over the deception practiced upon him—that he might as well go home and pack his grip-sack preparatory to a journey to Utah, for Murray's doom was sealed.

The President was evidently waiting for Murray to do something that would warrant his removal, without entailing upon the Administration the false suspicion of putting him out of office for his attitude toward Mormonism. The end came when the Governor, angry at the Legislative Council for refusing to confirm his appointments, vetoed the general appropriation bill. "As soon as Murray vetoed that bill," said West, "I knew I was to be Governor of Utah." Murray's resignation was now demanded and his fellow Kentuckian appointed to succeed him.

The appointment of a non-resident of Utah to be her Governor, while a departure from a policy to which the Administration, if not pledged, was favorable, was an implied compliment to the appointee. The President deemed it one of the most important offices within his gift. Under the conditions then prevailing—the bitter prejudices dividing Mormons and Gentiles—it was probably considered wise to select the Executive of the Territory, as usual, from abroad. It was of the first consequence that the man chosen should be broad-minded and unbiased, possessing intelligence, prudence and courage; qualities necessary to fit him for a position peculiar among its class. That the choice fell upon Caleb W. West told of the confidence reposed in him by the President.

Governor West arrived at Salt Lake City on the evening of the



5th of May. He had been met at Ogden and east of there by delegations of Mormon and Gentile citizens, all anxious to do him honor. Addresses of welcome were made by Alderman W. W. Riter, representing Salt Lake City, and by Secretary Thomas, in behalf of the people of Utah. The new Executive responded in eloquent terms. From the balcony of the Walker House he addressed the multitude, expressing his good will toward all the people that he had been sent to govern, and his desire and determination to perform his duty fairly and impartially. Affable and courteous in manner, he impressed all who met him as a man of warm and generous impulses. A night or two after his arrival a reception was tendered him at the Salt Lake Theater by the municipal authorities; Mormons and Gentiles joining in the festivities.

Governor West took the oath of office before Chief Justice Zane on the 6th of May. His first act of importance was in line with the policy of peace and conciliation that he had resolved to pursue. It was to visit Apostle Lorenzo Snow and the other prisoners confined in the Utah Penitentiary for polygamous offenses, and offer amnesty to all who would promise to obey the Edmunds Law as interpreted by the Federal courts.

The Governor's first visit to the Penitentiary—for there were two visits with the same end in view—was two or three days after his arrival in Utah. He was accompanied by Messrs. Arthur Pratt, J. Barnett and Bolivar Roberts. The following excerpts of a letter written by the imprisoned Apostle to his family on the 28th of May give the salient features of the interview that then took place:

Upon being introduced, the Governor remarked that he had frequently heard my name spoken in respectable circles, was pleased to meet me; should have preferred, however, that this interview had occurred previous to my trial and conviction, as he believed had it so been, this imprisonment might have been avoided.

I replied that I appreciated his expression of sympathy and interest; that I accepted my present condition with a fair grace, feeling quite contented and tolerably comfortable, being conscious that I was innocent of any crime.

He regretted, he said, that there existed such an unpleasant state of affairs in Utah, but believed there was a remedy at hand, and he hoped that these difficulties would be

amicably adjusted. He thought it would be wise and politic for our people, at once, to place themselves and our institutions in harmony with the laws of our country.

"I infer from your remarks," said I, "that you now recommend the abandonment of our doctrine of plural marriage, and the abandonment of our wives. But as that doctrine is a fundamental principle of our religion, we could not consent to relinquish it."

He replied that there was no occasion to renounce our religious belief and opinions; it was the practice only which was in conflict with the expressed wishes of the nation; that in the war between the North and South, he and his political friends held to certain views regarding State rights, but thought it just and politic to yield obedience to the laws, yet they still held the same opinions.

"I think, Governor," said I, "that yourself and your political friends acted wisely; but our cases are widely different. Your belief of State rights was of human source and direction, whereas our doctrine of celestial marriage is divine, revealed to us from heaven."

The Governor said he did not wish to bring religion into the question.

"Governor," I continued, "suppose we adopt your suggestions and relinquish plural marriage, what guarantee have we of enjoying peace and being unmolested in our religious rights and liberties?"

"Oh," said he, "I will pledge my word and honor you shall not be disturbed."  
\* \* \* He said we would certainly be protected in the courts, they being impartial and unprejudiced.

"Governor," said I, "all we ask now is an unprejudiced and correct interpretation and impartial administration of the laws; but you are aware, as well as ourselves, this is far from the fact, which is forcibly demonstrated in my own case as well as in many others."

"But," said he, "if in such cases the law has been wrongly interpreted and applied, there is a remedy—the Supreme Court of the United States, where your case is now being investigated; surely in that court prejudice or partiality cannot appear—the decisions will be just and should be honored and obeyed by all good citizens."

Said I, "our past experience in that court has shown quite the contrary, and yours, also, Governor. When the matter was referred to that court, which of the two candidates had been elected President, Hayes or Tilden, the notorious vote of eight against seven inspired a powerful conviction in the mind of yourself and your Democratic friends that political aims could find place and wield an influence even in that high tribunal of justice."

This provoked a laugh among the listeners at the Governor's expense. The interview, though sharp and pointed at many parts of the conversation, was pleasant and interesting throughout. After a cordial handshaking the Governor took his leave.

Before the second interview between Governor West and Apostle Snow, the case of the latter had been decided by the Supreme Court of the United States. The purpose of the Apostle in surrendering himself a prisoner has been shown. His three cases, carried upon writs of error to Washington, were thus advanced six

months upon the calendar of the court, so as to be heard about the last of April. He was represented by the eminent constitutional lawyer, George Ticknor Curtis, and by F. S. Richards, Esq. The speech of Mr. Curtis, on the 28th of April, was a powerful plea for religious liberty. He strongly protested against the course pursued by the Federal courts in Utah, and asked for such a construction of the term "cohabitation" as would confine its meaning and operation and prevent the excesses that were being practiced under cover of law and in the name of justice.

Assistant Attorney-General William A. Maury spoke for the Government. He was requested by Justice Bradley to state, in its behalf, what course polygamists should pursue in regard to their plural wives, and Chief Justice Waite remarked that he might take until next morning to reply. Pressed then by the Chief Justice and by Justices Bradley, Miller and Field for an answer, Mr. Maury evaded the question, and becoming excited declared: "It would have been infinitely better if these people, years ago, had been put to the sword."

Mr. Curtis protested against this "atrocious suggestion," and called for an explanation. Maury's attempt to gloss over the sanguinary sentiment was exceedingly awkward.

Mr. Richards, in his final address, made effective use of the Assistant Attorney-General's ill-advised remark. In conclusion he said:

I can but ask your honors for a reversal of the judgments in these cases and for a just and humane construction of this statute in its application to them, that the people who are affected by the law may know its requirements and be able to avoid its penalties. The liberties of many people are involved, and with some even life itself is in the balance. Point out the line of conduct they must pursue, but place the seal of your condemnation upon all attempts to wrest from them a religious belief which can never be surrendered while life and being last. I now submit the cases in the fervent hope that you will fully and mercifully answer the question which has been so frequently propounded by the Court during this discussion: "What must these people do?"

But the Court was not prepared, any more than the counsel for the Government, to answer the question. They could not answer it

rationally, without weakening the cause of the anti-polygamy crusade, which depended for success upon the very procedure against which the Mormons protested. There was but one way out of the difficulty—the dilemma of rendering a decision that would paralyze the hands of the crusaders, or ruling upon the question in such a way that neither the conscience of the Court nor the Constitution would approve of the action taken: It was to evade the issue and dismiss the cases for want of jurisdiction. This path the learned Justices decided to pursue.

But even here there was “a lion in the way”—their own decision in the Cannon case, by which they had assumed jurisdiction of this very class of cases. In order to be consistent, they reconsidered that action, recalled their mandate in the Cannon case, and dismissed it for want of jurisdiction. Having thus purged the record and removed the obstacle confronting them, they dismissed the Snow cases on precisely the same ground. The date of this decision was the 10th of May.

Three days afterward, Governor West, in company with Marshal Ireland—who had not yet been superseded—Secretary Thomas, Court Reporter Patterson, W. C. Hall and Registrar Webb, paid his second visit to the Utah Penitentiary for the purpose of interviewing the Mormon prisoners. He first talked with Apostle Snow, in the Warden's quarters, and then passed into the prison yard and conversed with the other inmates. The following account of the interview between the Governor and the Apostle on the 13th of May, is taken from the official report furnished to the Salt Lake City papers:

GOVERNOR WEST.—Mr. SNOW, I suppose you are advised of the action of the Supreme Court in your case?

APOSTLE SNOW.—Yes, sir; I heard they concluded they had no jurisdiction in my case.

GOVERNOR.—Of course you are aware that the determination by that court makes the final decision of that case by the Supreme Court here?

SNOW.—I suppose so.

GOVERNOR.—Under these circumstances, \* \* \* I conceived that it would be a very opportune time to call and submit to you a proposition, which, in con-

unction with Judge Zane and Mr. Dickson, we have thought advisable to make, in order to show you and the people of the Territory that they are mistaken in believing that those charged with the execution of the laws in the Territory are animated by any spirit of malice or vindictiveness towards the people who are in the majority in the Territory.

\* \* \* Upon consultation with Judge Zane and Mr. Dickson, and their supporting the view that I have suggested, I have come to say to you and your people here that we will unite in a petition to the Executive to issue his pardon in these cases upon a promise, in good faith, that you obey and respect the laws, and that you will continue no longer to live in violation of them.

SNOW.—Well, Governor, so far as I am concerned personally, I am not in conflict with any of the laws of the country. I have obeyed the law as faithfully and conscientiously as I can thus far, and am not here because of disobedience to any law. I am here wrongfully convicted and wrongfully sentenced.

\* \* \* \* \*

GOVERNOR.—If you are here under a conviction of that kind, and your intention was to obey the law, as you say you have done it, then you can sacrifice nothing if you promise and agree to obey the law in the future. \* \* \*

SNOW.—Well, but Governor, why should this be required of me, inasmuch as I certainly have not as yet disobeyed the law. The law has been wrongfully and illegally administered in the cases of many of us in the Pen.

GOVERNOR.—But we have to submit to the law as administered by its agents and properly constituted authorities. No one of us, as a citizen, has a right to put his opinion against that determination. \* \* \* You have taught and believed that certain practices are right which the law has put its ban upon. \* \* \*

SNOW.—I defy any man to come forward and testify that I have taught any person to disobey the laws. \* \* \*

GOVERNOR.—That has been the teaching of the body you belong to.

SNOW.—It has been in the past, but it has not been with me, in the present.

GOVERNOR.—I am not talking about the past. \* \* \* I come to propose that the Federal officials unite in asking the President for a pardon for you and for others, to relieve you from any punishment you may have incurred, if you, in good faith, for the future submit yourselves to the laws as interpreted and construed by the courts.

SNOW.—Well, now, Governor, course, there is no use of wasting time on this. If you ask me if I will renounce the principle of plural marriage, I will answer you at once.

GOVERNOR.—No; that is not the question. The question I ask you is, will you agree, in good faith, sincerely, in the future to respect and obey the laws as interpreted by the courts. \* \* \*

SNOW.—I was asked that same question in the First District Court at Ogden, and I \* \* \* considered it a question they had no business to ask. I had obeyed the laws and was convicted illegally and wrongfully, and I did not consider it was a personal question as to the future.

GOVERNOR.—I understand that. That was a question that was asked you in court and you had a right to decline to answer. Now I come with the earnest desire to save

misery and trouble to the people with whom I am to be associated officially, and I have it very near to my heart to relieve, if possible, the people here of a great deal of unnecessary suffering; because I am satisfied that all this suffering, so far as the protection of the peculiar institution which you have established is concerned, is useless; that it will

\* \* \* go for naught. I come with that spirit and with those motives.

SNOW.—Yes, I presume so; but my views are entirely different from that—

\* \* \* the result will not be the one you anticipate. \* \* \* No doubt there will be a great deal of suffering, but I, as one (and I presume it is so with the great majority of this people,) am ready to take the consequences.

GOVERNOR.—That being your avowed course of action, you ought then to do the officials in this Territory the justice to say that they are not to blame for this state of affairs. Common fairness should require you not to say and not to publish to the world that you are being persecuted, hounded, maliciously and vindictively pursued by the Federal officials who are entrusted with the administration of the laws.

SNOW.—Oh, no more than Jesus Christ and the Apostles. They had these same things to suffer. \* \* \* We expect, inasmuch as we have espoused the same religion and the same principles that they proclaimed, and for which they lost their lives, that we will have to suffer, and we are willing to do it.

GOVERNOR.—You are not being prosecuted for opinion's sake.

SNOW.—Oh, no more than the Roman Empire prosecuted the Apostles for opinion's sake. They rendered themselves in obedience to the laws of the country they were in. It was the laws that condemned them to death, and it was the Jewish law that condemned Jesus.

GOVERNOR.—You are getting off the question. \* \* \* You must look at this matter just as it stands. The courts have construed this law, and their construction of it is the law and we have no right to say anything else.

\* \* \* \* \*

SNOW.—But I have no confidence in the courts. Even if I was to make a promise I have no idea in the world that the courts would administer us justice. Let them first administer us justice, and administer the laws correctly, and then we will see.

GOVERNOR.—Yes, but that is your own individual opinion that the laws are not administered correctly.

SNOW.—It is your own individual opinion that they are.

GOVERNOR.—I beg your pardon. We must not be too egotistical. \* \* \*

It seems to me you cannot say that you have no confidence in the protection of the courts and officials here—

SNOW.—I have no confidence whatever.

GOVERNOR.—You ought not to say that, unless you believe that I have come here under false pretenses, and that Judge Zane and Mr. Dickson, who have concurred with me, are not doing it in good faith.

\* \* \* \* \*

SNOW.—I certainly believe in your sincerity, but you are not the court. As to Dickson, and as to Zane, I have no confidence in them at all.

GOVERNOR.—Mr. SNOW, I think you are very unjust in that opinion, because I know that this suggestion that I make—

SNOW.—If you had suffered you would think differently.

GOVERNOR.—But you are charging the suffering to them wrongfully, I think. They do not make the laws; they execute them, and your suffering occurs from your disobedience to the laws. You are responsible for the suffering, not Judge Zane nor Mr. Dickson.

\* \* \* \* \*

SNOW.—They send us here without a particle of evidence. It is through the counsel given to the jury by the judge—Judge Zane, who is influenced by Dickson. I have not a particle of confidence in those men. If you had come entirely alone, without the names of those men, we should have more confidence in the propositions.

GOVERNOR.—You can have confidence in the propositions, whether I tell you or they, because they are made in entire good faith.

SNOW.—What did I tell you the other day in the talk we had in reference to the Supreme Court?

GOVERNOR.—That Supreme Court has a duty to perform. Of course, it could not take jurisdiction of the case, which is not within its jurisdiction.

SNOW.—They took jurisdiction in the first case that went up there.

GOVERNOR.—Of course, then; if they were wrong in the first place I would not have so great a respect for them if they did not turn around and rectify it in the other case.

SNOW.—If Judge Zane and Dickson wish to take the course to obtain any proposition from me in this matter, let them first release me and my friends from the Penitentiary.

GOVERNOR.—They could not do it; nobody but the President could.

SNOW.—Well, we don't ask it.

Further conversation followed, and the Governor and his party, with Apostle Snow, then passed inside the walls of the rectangular corral called—most appropriately at that time—“The Pen,” and submitted the offer of amnesty to the other Mormon polygamists confined there. They were not pressed for an immediate reply, but were given time to reflect upon the matter presented to them. Their answer, in writing, was as follows:

UTAH PENITENTIARY, May 24th, 1886.

*To His Excellency, Caleb W. West, Governor of Utah:*

SIR.—On the 13th instant you honored the inmates of the Penitentiary with a visit, and offered to intercede for the pardon of all those enduring imprisonment on conviction under the Edmunds Law, if they would promise obedience to it in the future, as interpreted by the courts. Gratitude for the interest manifested in our behalf claims from us a reply. We trust, however, that this will not be construed into defiance, as our silence already has been. We have no desire to occupy a defiant attitude towards the Government, or be in conflict with the Nation's laws. We have never been accused of violating any other

law than the one under which we were convicted, and that was enacted purposely to oppose a tenet of our religion.

We conscientiously believe in the doctrine of plural marriage, and have practiced it from a firm conviction of its being a divine requirement.

Of the forty-nine Elders of the Church of Jesus Christ of Latter-day Saints now imprisoned in the Penitentiary for alleged violation of the Edmunds Law, all but four had plural wives from its passage to thirty-five years prior to its passage. We were united to our wives for time and all eternity by the most sacred covenants, and in many instances numerous children have been born as a result of our union, who are endeared to us by the strongest paternal ties.

What the promise asked of us implied you declined to explain, just as the courts have done when appeals have been made to them for an explicit and permanent definition of what must be done to comply with the law.

The rulings of the courts under this law have been too varied and conflicting heretofore for us to know what may be the future interpretations.

The simple status of plural marriage is now made under the law material evidence in securing conviction for unlawful cohabitation: thus, independent of our act, ruthlessly trespassing upon the sacred domain of our religious belief.

So far as compliance with your proposition requires the sacrifice of honor and manhood, the repudiation of our wives and children, the violation of sacred covenants, heaven forbid that we should be guilty of such perfidy; perpetual imprisonment, with which we are threatened, or even death itself, would be preferable.

Our wives desire no separation from us, and were we to comply with your request, they would regard our action as most cruel, inhuman and monstrous, our children would blush with shame, and we should deserve the scorn and contempt of all just and honorable men.

The proposition you made, though prompted doubtless by a kind feeling, was not entirely new, for we could all have avoided imprisonment by making the same promise to the courts; in fact, the penalties we are now enduring are for declining to so promise rather than for acts committed in the past. Had you offered us unconditional amnesty, it would have been gladly accepted; but, dearly as we prize the great boon of liberty, we cannot afford to obtain it by proving untrue to our conscience, our religion and our God.

As loyal citizens of this great Republic, whose Constitution we revere, we not only ask for, but claim, our rights as freemen; and if from neither local nor national authority we are to receive equity and mercy, we will make our appeal to the Great Arbitrator of all human interests, who in due time will grant us the justice hitherto denied.

That you may, as the Governor of our important but afflicted Territory, aid us in securing every right to which loyal citizens are entitled, and find happiness in so doing, we will ever pray.

LORENZO SNOW,  
ABRAHAM H. CANNON,  
HUGH S. GOWANS,  
RUDGER CLAWSON,

GEORGE C. LAMBERT,  
GEORGE H. TAYLOR,  
HELON H. TRACY,  
JAMES MOYLE,



WM. WALLACE WILLEY,  
 DAVID M. STUART,  
 HENRY W. NAISBITT,  
 L. D. WATSON,  
 CULBERT KING,  
 WM. D. NEWSOM,  
 WM. GRANT,  
 JOHN PRICE BALL,  
 AMOS MAYCOCK,  
 OLUF F. DUE,  
 JOHN Y. SMITH,  
 JOHN WM. SNELL,  
 HENRY GALE,  
 THOMAS C. JONES,  
 JOHN BOWEN,  
 WM. G. SANDERS,  
 ANDREW JENSON,  
 JOHN BERGEN,  
 JOSEPH H. EVANS,  
 JAMES E. TWICHELL.

HYRUM GOFF,  
 JOSEPH McMURRIN,  
 HENRY DINWOODEY,  
 HERBERT J. FOULGER,  
 STANLEY TAYLOR,  
 JAMES H. NELSON,  
 FREDERICK A. COOPER,  
 JAMES O. POULSEN,  
 ROBERT MCKENDRICK,  
 ROBERT MORRIS,  
 SAM'L F. BALL,  
 S. H. B. SMITH,  
 GEO. B. BAILEY,  
 NEPHI J. BATES,  
 JOHN PENMAN,  
 THOS. BURNINGHAM,  
 WM. J. JENKINS,  
 JOHN PORCHER,  
 C. H. GREENWELL,  
 WM. H. LEE.

That Governor West was chagrined at the failure of his attempt to reconcile Mormon and Gentile differences, was evident. The soreness of his disappointment doubtless influenced much of his subsequent course. At the same time he had the good sense to see that the respectful reply to his humane and well-meant proposal was not an ebullition of insolence and defiance—as some of his friends would fain have had him believe—but simply an earnest outpouring of sentiment from honest hearts, bent upon standing by their religious convictions. The recognition of this fact did not deter the Governor from taking part against the Mormons and helping on the crusade, but it prevented him from adopting the mistaken notion, embraced by many, that the Mormons were not sincere in the belief that plural marriage was a divine institution. Neither could he be convinced, after his interview with the grey-haired Apostle who clung tenaciously to his chains rather than relinquish one jot or tittle of his religion, that the Mormon leaders, any more than their followers, were hypocritical and insincere.

The Governor's next step was to issue, on the 16th of July, a

proclamation, warning the Mormons, and all who intended to become Mormons, against violating the Edmunds Law.

In his first report to the Secretary of the Interior, October, 1886, he recommended the enactment of further Anti-Mormon legislation. The report was temperately and even kindly worded, though severe in some of its suggestions. It referred to the Penitentiary, the good health of whose inmates, "under crowded and unfavorable conditions," spoke well "for its conduct and management," also to the Industrial Home, a very unnecessary institution, to found which the last Congress had appropriated forty thousand dollars with a view to providing homes and employment for women and children who, it was imagined, would desert or be cast off by their husbands and fathers as the result of the crusade. The number of convictions under the Edmunds Law in Utah was given as ninety-three; six for polygamy and eighty-seven for unlawful cohabitation. Most of these were from Salt Lake, Weber, Beaver and Tooele counties; and all from eight of the twenty-four counties of the Territory. Only seven men had promised to obey the law and thus secured their freedom. Certain reforms were recommended for the U. S. Marshal's office. All fees should be turned into the Territorial treasury, the Marshal to receive a fixed salary of not less than five thousand dollars per annum. The Marshal and his deputies ought to be men of the very best character and qualities. The Governor stated that there was no armed resistance to the enforcement of the laws in Utah, though there was much bitterness and division between Mormons and Gentiles, and as a precautionary measure he recommended legislation that would make the troops of the regular army—there being no organized militia within the Territory—available to the civil authorities in case of a violent outbreak.\* Then followed the recommendations for further legislation.†

\* Governor Murray had made the same recommendation in 1883.

† Governor West's report drew forth a commentary from George Ticknor Curtis, who, on November 1st, addressed to Secretary Lamar an epistle on the affairs of Utah, taking issue with the Governor in the matter of the recommended legislation, holding it to be unnecessary and unconstitutional.

Late in the year the Governor went east, his intention being to visit his "old Kentucky home" and spend some time at the national capital.\*

In the autumn of 1886 there sprang into existence among the Gentiles of Utah a secret organization known as "The Loyal League," having its headquarters at Salt Lake City and branch organizations in the various towns and settlements of the Territory. It probably owed its origin to the fear that the Administration at Washington was about to inaugurate a milder policy toward the Mormons. The objects of the League were thus stated in its constitution, a copy of which was secured and published, with the names of the principal officers of the organization, by the *Deseret News*:

To combine the loyal people of Utah, male and female, irrespective of politics, in opposition to the political rule and the law-defying practices of the so-called Mormon Church; to oppose the admission of Utah into the Union until she has the substance as well as the form of republican government; to raise money to maintain agents in Washington or elsewhere to labor for these ends.

One of the earliest acts of the Loyal League was to employ Mr. C. W. Bennett, a prominent attorney, to proceed to Washington and there co-operate with Mr. R. N. Baskin, in laboring for further legislation against the Mormons. These gentlemen, who were sur-named "the busy B's," found an active and able ally at the capital in Miss Kate Field, who, utilizing certain materials gathered during her sojourn in Utah, had prepared a lecture entitled "The Mormon

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\* Shortly before leaving, the Governor pardoned Charles W. Hemenway, an Ogden editor, who, for libel, had been sentenced by Judge Powers to pay a fine of a thousand dollars and be imprisoned in the Weber County jail for one year. Hemenway was an eccentric character, a new arrival in Utah, and a recent convert to Mormonism. His vigorous assaults, through the columns of the Ogden *Herald*, upon the crusaders, drew down their wrath, and he was prosecuted for alleging that Judge Zane had rendered "a crooked decision." After three months in jail the poor fellow weakened, and wrote a very humble letter to the Chief Justice, apologizing for his offense, and asking him to use his influence to secure him a pardon. Judge Zane, who had had no hand in the prosecution, granted the prayer of his suppliant, and Hemenway was forthwith pardoned by the Governor. The ex-convict, out of sheer gratitude it would seem for this act of clemency, forsook the cause for which he had fought, and became an ardent Anti-Mormon.

Monster," which she delivered in Washington at the very opening of Congress, and subsequently in other large cities of the East.

During this period, one of the utmost importance to the people of Utah—for it was the one that produced the Edmunds-Tucker Law—her faithful and devoted Delegate, Hon. John T. Caine, rendered excellent service in behalf of his constituents. Ably assisted by other citizens of the Territory, who spent the winter in Washington, he did all in his power to ward off the second staggering blow aimed at the liberties of the majority of his fellow citizens in Utah.

In this part, the crusade went on with unabated rigor. In August, 1886, fifty indictments were returned by the grand jury at Salt Lake City for alleged violations of the Edmunds Law.

The most important trials of that year were those of Royal B. Young, Orson P. Arnold, N. V. Jones and Frank Treseder. The first two were "segregated" cases. Elder Young, for unlawful cohabitation, was sentenced on June 1st to pay a fine of nine hundred dollars and costs, and to be imprisoned in the Penitentiary for eighteen months. Elder Arnold, who had promised to obey the law, but had subsequently visited the children of his plural wife under circumstances that led the public prosecutor to suspect that he had not kept his promise, on October 21st was fined four hundred and fifty dollars and given fifteen months' imprisonment.

The Jones-Treseder case was not of a polygamous character. These defendants were charged with attempted bribery; one Franks, a U. S. Deputy Marshal, accusing them of endeavoring to purchase from him information of prospective polygamous prosecutions. Franks testified on the witness stand, much to the discomfort of U. S. Attorney Dickson and U. S. Marshal Ireland, that he had been made a deputy marshal for the especial purpose of entrapping Messrs. Jones and Treseder, whose designs he had previously communicated to those officials. The latter were not prosecuted for conspiracy. The defendants were sentenced by Chief Justice Zane on the 13th of November, each to three years' imprisonment in the Penitentiary.

Among the notable arrests of the year were those of Seymour B. Young, one of the First Seven Presidents of Seventies; Elias Morris, Alexander McRae, John Q. Cannon, William E. Bassett, George F. Gibbs, John H. Rumel, Angus M. Cannon and George B. Wallace, all of Salt Lake County; Lorin Farr and Francis A. Brown, of Weber County; Charles O. Card, President of the Cache Stake of Zion, and B. H. Roberts, of Davis County; the last-named one of the First Seven Presidents of Seventies, and an editorial writer for the Salt Lake *Herald*.

Elders Young and Card escaped from the officers; the former to return after many months and deliver himself up to the law, whereupon his case was dismissed; while the latter proceeded to British America, and there founded Cardston, the first Mormon settlement in that region. Elder Bassett was the newly appointed successor to Bishop John Sharp. His case became celebrated, from the fact that he was convicted upon the testimony of his former legal wife, who was permitted to appear against him; a fact that furnished ground for an appeal to the Supreme Court of the United States, which reversed the decision of the Utah courts in this case. Elder Roberts "jumped" his bond—one thousand dollars—refusing to be tried under existing conditions, and seeking safety in a foreign land. He subsequently returned, pleaded guilty and served a term in the Penitentiary. The others named, with the exception of Elder Rumel, a High Councilor of the Salt Lake Stake of Zion—who was released on promising to obey the law—were discharged either before or after trial. There were many convictions during this period, however; no less than fifty Elders being sent to the Penitentiary in 1886.

In Idaho and Arizona the crusade was not so prolific of victims, but its operations were none the less severe. In the north, convictions followed arrest with even more certainty than in Utah. The spirit prevailing in that part may be deduced from a remark made by U. S. Marshal Dubois, after selecting the materials for a jury. Said the future Delegate and Senator from Idaho: "I have now

got a jury that will convict any Mormon charged with unlawful cohabitation, innocent or guilty. It would convict Jesus Christ if He were brought before this court for trial on this charge."

Apostle John W. Taylor, of Salt Lake City, who, in a discourse at Oxford, Idaho, had mentioned the subject of polygamy, animadverted upon the test-oath and advised all monogamous Mormons to vote, notwithstanding their disfranchisement, at the approaching election for Delegate to Congress, was accused of "inciting to lawlessness," arrested and taken before U. S. Commissioner House, and held to bail in the sum of five thousand dollars. His accuser was H. W. Bennett, a Republican candidate for office in Bingham County, where there were many Mormons, whose sympathies were with the Democrats. The witnesses against him were R. J. Anthony and John F. Harris, "Josephites," or members of the Reorganized Church of Jesus Christ of Latter-day Saints. In October Elder Taylor was indicted by the grand jury at Blackfoot, but early in May, 1887, the case against him was dismissed.

In Arizona the Anti-Mormon sentiment had greatly modified since the latter part of 1884. Few polygamists had been prosecuted of late, and the penalties laid upon these, as a rule, were light. In October, 1886, at the instance of Hon. C. C. Bean and others, Elders Tenney, Kempe and Christopherson, imprisoned at Detroit, Michigan, since December, 1884, were pardoned by President Cleveland\* and restored to liberty. Mr. Bean was a Republican, and Delegate to Congress from Arizona. In January, 1887, the Legislature of that Territory, acting upon a suggestion from Governor Zulick, repealed the Anti-Mormon test-oath that had been in force for about two years.

A few words now in relation to the Bassett case, which was tried before Associate Justice Henderson, in the District Court at Ogden, Utah. It had its origin in October, 1886, when the defendant, Bishop William E. Bassett, was arrested at his home in the Twentieth Ward, Salt Lake City, and taken before U. S. Commissioner McKay, where he gave bonds in the sum of fifteen hundred dollars.

He was charged with unlawful cohabitation. The examination took place on Monday, October 18th. It resulted in the defendant's being held to answer to the grand jury, not only for unlawful cohabitation, but for polygamy. He was required to give bonds aggregating fifteen thousand dollars.

The principal witness against the defendant was Mrs. Sarah Ann Williams Bassett, his former legal wife, from whom he had separated in January, 1886. She testified that she was married to the defendant on May 2, 1872, at Cardiff, in Wales, and that subsequently in Utah, while she was still his wife, he had married Miss Kate Smith; a fact which he had admitted to the witness. Since then the latter had not lived with him. The marriage with Kate Smith was alleged to have taken place in the Logan Temple, between the 12th and 16th of August, 1884.

The last-named lady denied that she was married to the defendant at Logan, but admitted that she was married to him at Salt Lake City after his divorce from the other wife.

A day or two after the examination before the Commissioner, the grand jury of the Third District endeavored to get Mrs. Kate Smith Bassett to answer certain questions, with a view to proving two marriage ceremonies between her and the defendant; one at Logan in 1884, the other at Salt Lake City in 1886. She declined to answer, on the ground that she was Bishop Bassett's legal wife, and could not be required to testify. She was then taken before Chief Justice Zane.

That magistrate was on record as having ruled, some months previous, that a legal wife was a competent witness against her husband in cases where the husband had committed a crime against the wife; and the Judge held that the marrying of a plural wife was a crime against the legal wife. Under this ruling, U. S. Commissioner McKay had compelled legal wives to testify against their husbands. Judge Powers had done the same thing, but had become convinced of his error, and in the Supreme Court of the Territory had voiced an opinion reversing one of his own rulings, which

required the legal wife to testify.\* All that Judge Zane could now do, in the Bassett case, was to request the grand jury to further investigate the matter. They could make no headway, however, and finally left the knotty problem to their successors.

Meantime the grand jury of the First District—in which Logan, the place of the alleged polygamous marriage, was situated—had taken up the case. On the 23rd of November they returned an indictment against Bishop Bassett for polygamy. A warrant was issued by Judge Henderson and the defendant was arrested on December 21st and required to renew his bonds for his appearance before the District Court at Ogden.

There his trial occurred, beginning on the 4th and ending on the 6th of January, 1887. A motion was made to dismiss the indictment on the ground that it had not been found and presented in the manner prescribed by law; in other words, because it had been found without any other evidence than that of the legal wife. This motion was overruled. The defendant pleaded not guilty and was tried by the following named jurors: Edward Sewell, Temple Short, Andrew Larsen, William Beeton, Mark Fletcher, Charles Jay, C. A. Eklund, John Germer, John Allen, A. I. Stone, George Burrows and Joseph Jenkins. U. S. Attorney Dickson, assisted by Ogden Hiles, prosecuted, and Messrs. Sheeks, Rawlins and Richards defended the case.

The prosecuting attorneys were particularly severe upon the defendant in their addresses to the jury, not only accusing him of obtaining a divorce from his first wife by fraud, but showering upon him such epithets as “scamp,” “liar” and “scoundrel,” and stigma-

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\* This ruling was in the case of Barnard White, of Ogden. The defendant at the time of his conviction had but one wife, Jane F. White; his first wife, Diana, having died in January, 1886, and a second marriage ceremony with Jane, whom he had first married about ten years before, having been performed in April, after the death of Diana. Jane had thus become the legal wife. Judge Powers nevertheless held that she was a competent witness and compelled her to testify. The case was appealed to the Territorial Supreme Court, where, in July, 1886, Powers, as stated, being convinced of his error, was permitted to voice the opinion of the Court reversing his own decision, and ordering that the defendant be given a new trial.





*O. J. White*



tizing his wife, Mrs. Kate Bassett,—a lady of spotless character—as “a strumpet and a harlot.” These “arguments,” which were applauded by a portion of the spectators, had due weight with the jury. They rendered a verdict of guilty. The defendant was sentenced to pay a fine of five hundred dollars and to be imprisoned in the Penitentiary for five years. At the passing of judgment, his former wife, who was present, bowed her head and burst into tears. An appeal was taken to the Supreme Court of the Territory, where on the 26th of February the judgment of the District Court was affirmed. A writ of error was issued March 1, 1887, and the case was carried up to the court of last resort.\*

Such was the general state of affairs connected with the crusade at the close of 1886 and the opening of 1887. For more than two years the Mormon community had been under the harrow of the Edmunds Law, pressed down and made heavier by the harsh procedure of the Federal courts and their emissaries. All Utah was in mourning. The usual glad and grand Sabbath School Jubilee, contemplated for Pioneer Day of the year 1886, had been converted into “a solemn assembly” by the Latter-day Saints of Salt Lake City and vicinity, who assembled, old and young, ten thousand strong, in the great Tabernacle and gave vent to their feelings in prayers, hymns and other expressions appropriate to the occasion.† What the Mor-

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\* Among the errors assigned was the following:

The District Court erred in permitting Mrs. Sarah Bassett, the former legal wife of the plaintiff in error, against his objection, to testify to a confidential communication made to her by him, while they were husband and wife, and not in the presence of any other person.

Another alleged error was that of permitting Andrew Larsen, who had been a polygamist, but had been pardoned on promising to obey the law, to act as a juror.

The Bassett case was not heard by the Supreme Court of the United States until the October term of 1890. As stated, the decision of the Utah courts was reversed.

† The interior of the vast building presented a strange contrast to the gaily decorated appearance of former celebrations. The stands were empty and draped in black. None of the general Church authorities, or the authorities of the Salt Lake Stake except some members of the High Council, could attend, and but three of the Pioneers—Lorenzo D. Young, Millen Atwood and Samuel Turnbow—graced the occasion with their presence. All others were in exile.

mons suffered during those years of trial is best indicated by the fact that the crusaders themselves became heart-sick, weary of their pain-producing work, and longed for the trouble and turmoil to cease.




Frank H. Dyer,



## CHAPTER XX.

1886-1887.

THE PAROWAN TRAGEDY—EDWARD M. DALTON SLAIN BY DEPUTY MARSHAL THOMPSON—THE SLAYER ACQUITTED—THE SNOW CASE AGAIN BEFORE THE SUPREME COURT OF THE UNITED STATES—"SEGREGATION" SHATTERED AND THE IMPRISONED APOSTLE SET FREE—OTHER RELEASES RESULTING FROM THE DECISION—RUDGER CLAWSON AND OTHER POLYGAMISTS PARDONED BY PRESIDENT CLEVELAND.

HE close of the year 1886 witnessed a deed that thrilled all Utah with horror. It was the killing of Edward M. Dalton, a Mormon, by Deputy U. S. Marshal William Thompson, Jr. The tragedy occurred at Parowan, Iron County, on the 16th of December. The facts connected with the affair are as follows:

Edward Meeks Dalton, a native of Parowan, thirty-four years of age, and a man of many amiable qualities, had been indicted for unlawful cohabitation by the grand jury of the Second Judicial District, sitting at the neighboring town of Beaver. The indictment was found early in 1885. In the spring of 1886 Dalton was arrested by Deputy Marshal William O. Orton, but made his escape from that officer, or rather from R. H. Benson, City Marshal of Parowan, to whom Orton had temporarily entrusted his prisoner.

The manner of the escape was unique. The deputy marshal had gone to the telegraph office to notify his superiors at Beaver of the capture, and had left Dalton standing with Benson and others in the street. The prisoner, a fine, manly fellow, brimming with health and good nature, six feet in height and weighing over two hundred pounds, was noted not only for strength and courage, but for activity and swiftness in running. As the shades of evening fell, and Orton delayed his coming, Dalton remarked jocularly to Benson

that he wished the deputy would return, as it was his intention to escape and he did not wish to get the city marshal into any trouble. He added, with a smile, that if Orton did not come soon—he had been gone more than an hour—he would have to leave anyhow. Suiting the action to the word, he adroitly slipped off his boots, gave Benson a sudden slap on the shoulder, bade him “good night,” and was off as on the wings of the wind. Benson, who was also fleet of foot, gave chase, but could not overtake the fugitive, who soon disappeared in the darkness. He was seen about town next day, but was not rearrested. Soon afterward he went to Arizona, where he spent several months, assisting to conduct a mail service. At the approach of winter he returned north to visit and care for his family; reaching Parowan about the 10th of December. He had been warned of danger by friends while on his way home, but had impulsively replied: “I must see my mother if it costs me my life.” Within a week from his return, he lay cold in his coffin, shot through the back with a rifle-ball fired by Deputy Marshal Thompson.

Preparations to retake Dalton were made by the officers as soon as it was learned that he had reappeared in Parowan; Deputy Marshals Thompson and Orton coming from Beaver for that purpose during the night of December 15th. Before daybreak they presented themselves at the door of Daniel Page, an apostate Mormon, who kept a hotel in Parowan. Learning of their errand, he entered zealously into the scheme for Dalton’s arrest. Orton was the same man who had figured in the former capture. Thompson, who like Page had once been a Mormon, had won notoriety from having accompanied Deputy Marshal Gleason in a raid upon Greenville, near Beaver, when, according to report, they conducted themselves in a very reprehensible manner.\* Thompson, it seems, was addicted to the reckless use of firearms. Shortly before the event about to be narrated, he had sent a bullet after the retreating form of Mr. Peter

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\* See statements of Mrs. Easton and Miss Morris, in Ladies’ Memorial, Chapter XVIII.



M. Jensen, of Parowan, who slipped out of the back door of his dwelling, just as Thompson presented himself at the front door with a warrant for his arrest. Jensen stumbled and fell, and thereby saved his life; for Thompson, who was an unerring marksman, was preparing to shoot again, when the fugitive surrendered. Jensen's alleged offense was the same as Dalton's—unlawful cohabitation. It being but a misdemeanor, the officer had no right to shoot.\*

Nevertheless it had been a practice with some of the U. S. Marshal's subordinates to make very free with their firearms, thrusting them into the faces of men and women upon the slightest provocation, or upon no provocation at all, and discharging them recklessly, to the imminent jeopardy of peaceable citizens. Deputies Gleason and Orton had been heard to say that they would shoot Dalton rather than permit him to again escape.† It remained for their comrade, Thompson, to carry out the threat.

It was between four and five o'clock on the morning of the fatal day—Thursday, December 16th—that Daniel Page admitted Deputy Marshals Thompson and Orton into his domicile. About eight o'clock, according to Page's statement, he went, at Thompson's request, across the street to the house of John J. Wilcock, of whom he borrowed a gun—a Browning rifle, .32 calibre—telling the owner that "Bill" Orton had sent him.

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\*There is a very broad distinction between forcible opposition to an arrest, and attempting to flee from it. In cases of misdemeanor there is no rule of law that takes away from a man who flees from an attempted arrest the right to defend his life. An officer in such cases is not justified in shooting at a person whom he is attempting to arrest, because he will not stop.—*Criminal Law of California, Section 835.*

Mere words spoken will not constitute an arrest; there must be something by way of physical restraint.—1 *Bishop's Criminal Procedure, Section 157.*

In cases of a felony, when called to, the defendant should stop, but if he does not, the officer is justified in shooting at him. But if a misdemeanor, he has no right to take this extreme measure.—*Ibid. Section 159.*

Generally speaking, in misdemeanors it will be murder to kill the party accused for flying from arrest, though he cannot be overtaken and though there be a warrant to apprehend him.—2 *Bishop's Criminal Law, Section 649.*

† Peter Wimmer and L. D. Watson, residents of Parowan, the latter Edward M. Dalton's brother-in-law, both made statements to this effect.

Having secured the weapon, the next care of the officers was to ascertain the whereabouts of the man upon whom they intended to use it.

For this purpose, Mr. Page's son Willie, a boy of sixteen or seventeen years, who was "about to start up town," was asked by his father to notice if he saw Edward Dalton. Willie returned and reported that he had seen him near Edgar Clark's corral. He had probably learned also that it was Dalton's design to drive a herd of stock to the range that morning, in doing which he would come from the east and pass Page's house, situated on the north-west corner of a block. At all events, the deputies, instead of sauntering forth in quest of their man, remained indoors, evidently waiting for him to come their way.

"During the forenoon," said the boy Willie in his deposition, "I happened to be standing at the gate on the north side of my father's house, when I saw Dalton and others, about forty or fifty rods distant, driving a herd of cattle down the street toward me. I entered the house immediately and informed the officers, Thompson and Orton, that Dalton was coming."

Just as Dalton was passing the house, Thompson and Orton went out at the back door, on the south side, while the Pages, sire and son, stationed themselves at the north and west windows respectively, and watched Dalton as he turned the corner to go south. He was riding a horse, bare-back, was unarmed and apparently unsuspecting of danger. That he had no weapon was plainly to be seen, as his coat was off; his robust health being ample, even on a winter day, to protect him from the cold. As Dalton was riding slowly in a southwesterly direction, intent upon caring for a calf in the herd, which his assistant, Collins W. Clark, had pointed out to him as being likely to "give out" before they reached the range, he was suddenly hailed by voices on his left and ordered to halt. The order was twice or thrice repeated, but the calls were so close together as to seem almost simultaneous. Immediately afterwards a shot was fired from Page's backyard, whence the voices had pro-



*Isaac K. Wright*



ceeded, and Dalton was seen to reel and grasp his horse's mane. The animal reared slightly, wheeled to the right and went westward a few steps, where its rider fell to the ground, writhing in agony. He was mortally wounded. His slayer was Deputy Marshal Thompson, who had shot him with the rifle borrowed by Daniel Page of Mr. Wilcock, near whose house Dalton fell.

The first person to reach the dying man was Mrs. Barbara A. Lyman, who, from her premises south of Wilcock's, had seen the two deputies at the south end of Page's house; Thompson bringing his gun into position, as if waiting for Dalton to get within range; she had tried, but in vain, to warn the latter of his danger. She now rushed to where he lay and asked him where he was hurt. He could only answer, "I am killed." Samuel T. Orton, brother to Deputy Marshal Orton, had witnessed the shooting from his residence across the street north of Page's. He was the second person to approach. Thompson himself was the third. After firing the fatal shot, he leaned the smoking weapon against the rail fence near which he and his comrade had stood—Thompson with the gun, Orton with his revolver—when they ordered their victim to halt, and walked toward the prostrate man, saying: "I thought I would get you after a while." This remark was overheard by Mr. John H. Brown, a non-Mormon, who was outside the fence, a few steps south of Thompson and Orton, when the shot was fired.

The other witnesses to the shooting were Collins W. Clark, Dalton's brother-in-law; Brigham Brown, who, with John H. Brown and the two others, was driving the herd; Nehemiah Holyoak, and George S. Halterman, the last-named a non-Mormon.

Thompson, in reply to Samuel Orton, who said something about the shot being fatal, declared that the gun went off sooner than he intended. Then stooping down and tapping Dalton on the shoulder, he said, "I told you to halt; why didn't you stop?" The wounded man made no reply.

Dalton, whose life was fast ebbing away, was carried into Page's house, where he temporarily revived. Recognizing Thompson, who

was holding his hand, he ordered him to "let go." Dr. King examined the wound and pronounced it fatal. The ball had entered the back, on the left side, had pierced one of the kidneys, and ranging upward, lodged in the vertebra. A large crowd had gathered, and there was some talk of lynching Thompson, but reason prevailed over passion, and no violence was offered. The whole town was stricken with grief and horror, but even the most excited exercised self-restraint.

Dalton now seemed sinking, and forthwith the cry was raised, "Why let him die in the house of his murderers? Take him to his mother's." Strong arms tenderly lifted the dying man and bore him into the open air; but it was too late for him to reach home alive. When about a rod from Page's gate, he expired. It was a quarter past twelve o'clock when he breathed his last. He had lived in his wounded state just forty-five minutes. A weeping concourse of men and women followed the corpse to the home of Dalton's mother, where it was delivered to the heart-broken family.

A coroner's inquest was held the same day and a verdict rendered in which it was declared that the killing of Edward M. Dalton by Deputy Marshal Thompson "was feloniously done."

The funeral of the deceased took place two days later. The principal speaker was John Henry Smith, who, with his fellow Apostle, Heber J. Grant, happened to be in that part of the Territory attending Stake Conferences. Every effort was made by these Elders, on hearing of the tragedy, to prevent any possible tumult that might arise. Two-thirds of the population of Parowan followed Dalton's remains to their last resting place.

Meantime his slayer had been arrested by Sheriff Adams and taken before Justice Henderson, where he waived preliminary examination and was held to answer to the grand jury. At first he was angry at being interfered with, but finally concluded that he would be safer in the sheriff's custody than out of it. He was arrested at the telegraph office in Parowan. Deputy Marshal Orton was also taken into custody.

The news of the bloody deed reached Salt Lake City in the afternoon of the 16th, several telegrams, giving different versions of the killing, being sent from Parowan and Beaver. Thompson's own account was contained in the following telegram to U. S. Marshal Dyer :

PAROWAN, UTAH, December 16, 1886.

This morning at about eleven o'clock I undertook to arrest E. M. Dalton of this place, he having escaped from the officers last spring. He was on horseback. Myself and W. O. Orton both hailed him, but he turned his horse and started to get away. I fired with the intention of shooting over him. Called his name before I called to him to halt. Write you further from Beaver tomorrow.

W. THOMPSON, JR.

Tidings of the affair being transmitted to Beaver, thirty-five miles north of Parowan, a posse of deputy marshals, with a writ of habeas corpus issued by Judge Boreman, set out for the latter place to rescue Thompson from the hands of the sheriff. The leader of the posse was Oscar Thompson, son of Dalton's slayer. His companions were James Hutchings, Edward W. Thompson, Jr., and John Nowers. After they had departed, Assistant District Attorney C. W. Zane intimated to Mr. R. H. Gillespie, a member of the grand jury, and a cool, conservative man, that he feared trouble between the people of Parowan and the hot-headed youths who had been entrusted with the writ, and suggested that he follow them. Mr. Gillespie did so, making the journey to Parowan in four hours. After his departure from Beaver, ten other members of the grand jury, with Clerk J. R. Wilkins, of the District Court, took it upon themselves to go also. The names of the ten jurors were James E. Forshee, foreman; George L. Harding, James Stark, T. Ferguson, A. M. Hunter, H. S. Martin, Al. Carpenter, M. Durkee, B. McCall and Sydney Burton. Six other citizens of Beaver accompanied the party. All were armed cap-a-pie.

The posse experienced no trouble in securing the persons of Thompson and Orton—who were not in any danger—and bringing them back to Beaver. Sheriff Adams and two other citizens of Parowan accompanied them. They arrived at the seat of the Sec-

ond District Court at eight o'clock a. m., December 17th. A hearing was had before Judge Boreman the same evening. Thompson was admitted to bail in the sum of ten thousand dollars, and Orton in the sum of five hundred. Witnesses were summoned from Parowan and the case went immediately before the grand jury; a body of Thompson's own selection, and most of the members of which had displayed such a warm interest in his welfare that they had constituted themselves a portion of the party of rescue that met Thompson and escorted him in triumph to his home.\*

Meantime, Marshal Dyer, at Salt Lake City, horrified at Thompson's act, had revoked his commission as a deputy marshal and sent Arthur Pratt to Beaver to take charge of the district. In an interview with a reporter of the *Deseret News*, the marshal condemned Thompson's course unqualifiedly. He said that his orders to his men were that they should perform their duties strictly but impartially. They were never to resort to violence if it could be avoided, and were to deport themselves as gentlemen. He declared that if his orders had been adhered to in this case, Dalton would be alive. He also expressed the opinion that the investigation of the case should be left to the next grand jury, since "it would be unfair for Thompson's case to be handled by a jury of his own making."

While the *News* reporter was still in the marshal's office, in walked Colonel O. J. Hollister, chief secretary of the "Loyal League." He was very much excited as he informed the marshal that he had received a dispatch from C. W. Bennett, at Washington, stating that the death of Dalton was being heralded there as an outrage by U. S. deputy marshals. A dispatch prepared by the Associated Press agent at Salt Lake City had been suppressed, Hollister stated, and the Mormon side of the affair published. "Can't you give us something?" he asked. "Was there no justification for it?"

"No justification whatever," replied the marshal, "except what is stated in the telegrams to me. Thompson says that the man was

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\*Judge Boreman, foreseeing this complication, had opposed the going forth of the ten grand jurors, but all to no purpose.



trying to escape arrest, that is all. He had no right to shoot. Why, the man was only charged with a misdemeanor, and an officer has no right to shoot in such a case. The man had escaped twice before, but that is no justification. Thompson made a mistake; that is all there is about it."

Hollister urged the marshal to give some authoritative statement that would serve to palliate the deed in the minds of the authorities at Washington, but the latter remained firm, simply pointing to the latest telegrams from the south.

Hollister's next recourse was to the telegraph, which he used to defame the dead Dalton, in a desperate effort to justify "the deep damnation of his taking off." The slanders were promptly refuted by citizens of Iron County.

The Salt Lake *Tribune* said of the homicide:

According to the statutes of this Territory, made by Mormons, a homicide is excusable when committed by an officer when attempting to arrest a man charged with an offense punishable by imprisonment in the Penitentiary, if the killing is necessary to prevent the escape of the accused.

Answering this assertion, the *Deseret News* said:

The statutes of the Territory provide nothing of the kind. \* \* \* Here is the provision:

"Homicide is justifiable when committed by public officers \* \* \* when necessarily committed in retaking *felons* who have been rescued, or have escaped, or when necessarily committed in arresting persons charged with *felony*, and who are fleeing from justice or resisting such arrest."—*Compiled Laws, page 587.*

Dalton was not accused of felony. \* \* \* He was not then fleeing from justice at all. Whether he was so fleeing or not, the statute does not justify the officer in killing him. It was not done necessarily in any case. There is no law of God or man that gives color of justification for the deed.

On the 21st of December the grand jury at Beaver found an indictment against Thompson for manslaughter. The charge against Orton was ignored. Thompson's trial was set for January 6, 1887.

Outlining the defense that would be made, the *Tribune* said:

The Territorial statutes class as felonies all crimes punishable with penitentiary imprisonment.

To which the *News* replied:

The Territorial statutes do not punish the offense with which Dalton is charged by imprisonment in the Penitentiary. They do not make his alleged acts any offense at all. The law which he was accused of offending was a statute of the United States, and it defines the offense as a misdemeanor. Therefore it is not a felony, either actually or by implication.

*Tribune :*

Just so soon as it is established that a marshal commits a felony if he uses any force in the arrest of a man indicted under the Edmunds Law, those guilty will merely laugh when a warrant is presented to them.

*News :*

A verdict against Thompson will establish no such *Tribune* nonsense. It will simply put into effect that which is already established by law, namely, that officers have no right to kill persons charged with a simple misdemeanor, whether they are escaping or not.

*Tribune :*

The Mormons will do their utmost to convict. \* \* \* The Gentiles must see to it that Thompson has every advantage under the law.

*News :*

If this is not cool and impudent in the face of the facts, what can be designated by those terms? The whole matter will be in Gentile hands. \* \* \* And yet the support and influence of the whole Gentile element in the Territory is solicited, as necessary to the "Gentile cause." "A fair trial" is all that we can now ask for, but this the public do not expect. The indictment found by the friends of the murderer, and the course taken to secure a trial before a jury of the kind described [one summoned on special venire] do not encourage the anticipation that justice will claim its own. So the people simply wait for the finish of the farce, which they believe will be the finale of the terrible tragedy at Parowan.

The trial began at ten o'clock on the morning of the 6th of January, in the District Court at Beaver; Judge Boreman presiding. Assistant U. S. Attorney Varian conducted the prosecution, and Mr. P. L. Williams the defense. The jurors chosen to try the case were all non-Mormons, residents of the mining camps of Southern Utah. Most of them admitted that all they knew of the case was from reading the Salt Lake *Tribune*.

The principal witnesses for the prosecution were those who had

witnessed the killing. The substance of their testimony is contained in the foregoing narrative of the tragedy.

The first witness called by the other side was the defendant, William Thompson, Jr. He made a brief statement of his going to Parowan to arrest Dalton, who had been represented to him by Messrs. King and Page as "a hard man," against whom he must be on his guard. Daniel Page, he said, was eager for Dalton's arrest.

Willie Page was the next witness. His testimony was similar to his father's, which will be given later.

Presley Denney, David Pollock and E. W. Thompson bore witness of the defendant's "good character."

Ex-Deputy Marshal Gleason stated that he had been warned repeatedly of the risk he would run in endeavoring to arrest Dalton, for whom he once had a warrant. He produced a letter purporting to have been written by the deceased, warning him to "come heeled" if he came to arrest him.

Deputy Marshal Armstrong testified to receiving a letter from Dalton of altogether a different tenor to the one mentioned by Gleason.

Then came the testimony of Daniel Page, the principal witness for the defense, who, since the publication of his original affidavit, had had time to recollect some additional items.\* He had previously stated that just before the shot was fired, Dalton, on being hailed by the deputies, looked toward the south end of the house. He now added that Dalton did not stop when called, but continued reining his horse away from where the officers stood, and quickened his speed; that he was sitting upright until the summons was made, when he leaned forward and to the right. The witness had under-

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\* After news of the tragedy reached Salt Lake City, the *Deseret News* Company sent Mr. George C. Lambert to Parowan to obtain a full account of the affair from all parties familiar with the facts. He interviewed the eye-witnesses of the tragedy and obtained from them depositions, subscribed before William Davenport, County Clerk of Iron County. These depositions were given on December 27th, 1886, and were published by the *News* shortly afterwards. Daniel Page's sworn statement was among them.

stood that Dalton, when in town, always kept a horse ready, in order to escape. The shot, he said, was fired three seconds after the third command to halt. The witness declared that he did not tell Thompson that Dalton carried arms and was a dangerous man.

Both sides now rested as to the introduction of evidence, and Assistant U. S. Attorney Varian, who was present to prosecute Thompson, addressed the jury. He held that Dalton's offense—unlawful cohabitation, characterized by the Edmunds Law as a misdemeanor,—was in reality a felony, because punishable by imprisonment in the Penitentiary. This being the case, the defendant, an officer of the law, was justified in shooting him if necessary to prevent his escape. This remarkable plea,—more surprising even than Mr. Varian's refusal to prosecute the non-Mormon lechers a little over a year before—left little for the defendant's attorney to do. That little being done, the Judge charged the jury and they retired to consider upon a verdict. A few minutes sufficed for this formality. The verdict was "Not Guilty."

The *Deseret News*, which had predicted just such an outcome, commented on it as follows:

Thompson has been acquitted by one tribunal, but there is another which pronounces a different judgment. Before the bar of the public he stands convicted on a flood of direct evidence of the crime of wilful, deliberate and cowardly murder. The blood of innocence stains his soul. No sophistry or pettifogging will take it away, and no lying verdict will blot it out. It will show up red and gory through all the official and judicial white-wash that may be applied. The sound of that murderous bullet will ring in his ears, and the dying looks of his victim will not pass from his vision through life. The brand of Cain is upon his brow, and it is recorded on high, "He has shed innocent blood." There is still another tribunal before which William Thompson will yet stand arraigned. The Eternal Judge will be there to do unflinching justice. The victim will be present to confront the slayer. No specious plea of legal apologizer will avail. The bare and awful truth will strike conviction, and the murderer's doom will await the guilty. And when the assassin, set free on earth, is viewed with horror by the just, spatterings of the blood with which he is dyed will be found upon the skirts of those whose duty it was to bring him to his right deserts, but who partook of his crime by palliating the deed. Thompson should not be molested. Vengeance will come in its time from the Hand that will surely repay. But henceforth, in the eyes of all fairminded men, he will bear upon his brow the blistering mark of the crouching and cold-blooded murderer.

This was strong language, and it cost the publishers of the *News* a considerable sum of money. U. S. Marshal Dyer having restored to Thompson his commission as a deputy marshal, the latter, on the 24th of March, instituted legal proceedings against the *Deseret News* Publishing Company for libel, placing his damages at twenty-five thousand dollars. The *News* people were at a disadvantage. Whatever the facts in the case, Thompson had been officially acquitted, and had only to point to the record of his acquittal and to the charges made against him by the *News*, to convince any jury such as would have been selected to try the case, that his claim for damages was just. Everything being in his favor, he pressed the issue until the publishers, rather than risk a trial, proposed a compromise. In lieu of the large amount demanded, the damaged deputy consented to accept a tithe of the sum, which the *News* company paid, and thus the matter ended.

Soon after the killing of Elder Dalton and the acquittal of his slayer, came the tidings of an event which relieved to some extent the situation in Utah, and taught the majority of her people, what they had more than once been tempted to doubt, that Justice, though she had bade the region of the Rockies a temporary farewell, was still reigning on the banks of the Potomac. February of the year 1887 brought a decision from the Supreme Court of the United States declaring illegal the practice of "segregation," in vogue in the Federal courts of the Territory.

It has been shown how the court of last resort disposed of the three appealed cases of Apostle Lorenzo Snow, involving the important questions of "segregation" and "constructive cohabitation." The question pressed at the time these cases were dismissed for want of jurisdiction, was "constructive cohabitation;" "segregation" remaining in the background. By the court's decision the Mormon community was bound hand and foot and delivered over to the tender mercies of the crusaders, from whose anomalous, oppressive and unlawful procedure there was now no chance of appeal.

The situation of the oppressed people, presently and prospect-

ively, was pitiable. What to do under the circumstances it was difficult to decide. Among those who burnt the midnight oil seeking to devise some means of relief, was Apostle Snow's faithful and able attorney, Franklin S. Richards, who finally hit upon an expedient, which, though it seemed a forlorn hope, afforded, as he believed, "a good fighting chance." His idea was to isolate the question of "segregation" from all other issues, and make another effort to get the Snow case before the Supreme Court at Washington. There was but one way to do this, and that way was beset with difficulties. It was to institute proceedings in habeas corpus in behalf of his imprisoned client, on the ground of unlawful detention.

Such a plea was only applicable to that portion of time for which the Apostle had been sent to prison over and above the first six months—the legal penalty for unlawful cohabitation, so far as imprisonment was concerned. Consequently it was useless to apply for a writ of habeas corpus until the first six months had expired. Mr. Richards, while awaiting that expiration, secured the consent of his client to the proposed step, and prepared all needful preliminaries.

October came, and more than the necessary six months had passed. The application for a writ of habeas corpus was presented in the Third District Court on Friday the 22nd of that month. In the petition Apostle Snow showed that he was a prisoner in the custody of Frank H. Dyer, United States Marshal of Utah, and had been confined in the Penitentiary for "the supposed criminal offense" of unlawful cohabitation, since March 12, 1886, and had paid three hundred dollars in satisfaction of the fine adjudged against him, with all the costs awarded and assessed on the prosecution under the first of the three indictments in his case. He believed and was advised that his imprisonment was illegal, since the court that sentenced him had no jurisdiction to pass judgment upon more than one of the indictments, in all of which the offense was the same, and the maximum penalty for which was six months' imprisonment and a fine of three hundred dollars. Therefore, as he was now being punished twice for

one and the same offense, he prayed for the writ of habeas corpus to issue, to the end that he might be discharged from custody.

Judge Zane, on seeing the petition, asked the object of the proceeding, and was answered that the design was to test the legality of "segregation." The Judge set the time for the hearing at ten o'clock next morning. The hour arrived and the hearing began.

Mr. Ben Sheeks, of counsel for the petitioner, was the first speaker. He conceded that the court was not compelled to grant the writ, but hoped that no technicality would be allowed to stand in the way of getting the question of "segregation" before the Supreme Court of the United States.

Judge Zane stated that the writ might issue, but Mr. Varian interposed an objection. He argued that the Third District Court had no jurisdiction in this case, the defendant having been convicted in a co-ordinate court,—that of the First District. Moreover, the petition did not show sufficient cause for the discharge of the prisoner, and the writ should therefore be denied.

Mr. Richards contended that Mr. Varian's position was not well taken. The issuance of the writ was requested, so that all possible doubt as to the right of appeal might be removed. It was very far from consistent for the representative of the Government, who had claimed the right to "segregate" the offense of unlawful cohabitation as often as he chose—in consequence of which men had been imprisoned—to object to having the highest court in the land pass upon this construction of the law. If he was right, none should be more willing than Government officers to have the question decided in his favor; if he was wrong, those prosecuted under that method were being illegally imprisoned, and it was only an act of justice to them to have the matter set right. The case had been brought before Judge Zane because the statute required application to be made to the most convenient court. A review of the case was not asked for, either of this court or of the Supreme Court of the United States. The only question they desired to have settled was whether the court that sentenced the petitioner exceeded its jurisdic-

tion in passing additional judgments after he had been sentenced once for the offense.

Judge Zane decided not to grant the writ, but from this decision an appeal was taken to the court of last resort. There was some doubt as to whether an appeal would lie, but the Judge took no advantage of the situation, and two days later it was allowed.

The case came before the Supreme Court at Washington on January 20, 1887. Mr. Richards, associated with George Ticknor Curtis, appeared for the appellant, and Assistant U. S. Attorney-General Maury for the Government.

Mr. Richards, who was the opening speaker, called attention to the fact that the case involved two distinct propositions. The first and least important point was that the judgment pronounced upon Apostle Snow was void because of its uncertainty, in that the sentence of imprisonment made no allowance for the remission of time authorized by law in the event of good behavior. The second point was that three sentences were sought to be imposed upon the prisoner for one offense, namely, unlawful cohabitation, maintained continuously from January 1, 1883, to December 1, 1885. Various English and American cases were cited, bearing with singular analogy on the case under consideration. In one case it was held that the taking of coal from day to day for a period covering four years, from a coal mine in which some forty persons were interested, was but one offense, for the reason that there had been no cessation and the taking, while felonious, was in all respects continuous. In another case a man had attached a fraudulent pipe to a gas main from which, for a protracted period, gas had been drawn during the day and turned off at night, and which had been consumed without passing through a gas meter, yet it was held to be only one offense. In the case of drawing wine from a vat at different periods by a fraudulent tube, the act was held to be continuous, as also in the case of killing a number of horses in one day and of selling different loaves of bread; all were held to be continuous, and being con-



tinuous were therefore but one offense. The judge in one case reasoned that it was as just to hold that every stitch taken by a tailor on the Lord's day constituted a new and distinct offense as to hold that an act continuous in its nature could be segregated. Other cases were cited to show that where illegal fares had been collected by a public carrying company, punishment could not legally be imposed for every taking; but that the indictment could cover all the ground of illegal actions in one continuous direction either for the whole period, or any part thereof, until the finding of the indictment. The same rule held good in a case where a pilot had been employed against the regulations provided, and an endeavor had been made to inflict punishment for every vessel or boat on which he had been employed; but the decision of the court was that there was but one offense and the prosecution could only so proceed until the practice had been interrupted by the interference of the State. So with regard to the cohabitation of the prisoner. There was no evidence to show that the cohabitation on which he was convicted had been interrupted in any manner whatever from the first day of January, 1883, to the first day of December, 1885, either by act on the part of the prisoner or by any interference of an external or legal nature. The prosecution could not sit idly by for years, and then swoop down upon the unsuspecting citizen and pile on indictments by a process of segregation which, if tolerated, could be made to place him in prison for life and absorb a fabulous sum in fines. There must be an interruption in the relationship of cohabitation as construed by the courts, a clear cut, palpable interruption, before it was possible that two indictments or three could be found at one time for a past offense. As this act, beyond all doubt, and according to the wording and the dates of the very indictments, was continuous, it was but one offense. Being one offense, the judgment, so far as it concerned the second and third penalties, was void, for the reason that it inflicted three penalties for a single offense. The court had sought to impose a fine of nine hundred dollars and eighteen months' imprisonment for an offense which the law explicitly provided could not

bring upon the prisoner more than one-third either of the amount of the fine or the measure of imprisonment.

Mr. Richards called attention to the statement of the Supreme Court of Utah in the Snow decision, that they had only found one case sustaining the segregation theory. He then reviewed that case, which was decided by the Supreme Court of Massachusetts, and showed that it was inapplicable to the case at bar.

Justice Harlan asked if the question of continuous offense was not raised on the trial of the second or third case?

MR. RICHARDS.—“Yes; by the plea of former conviction.”

THE CHIEF JUSTICE.—“Was not that the question you sought to review here on writ of error the last time?”

MR. RICHARDS.—“That was one question. We sought on that writ of error to review all the errors that the court had committed. But the main purpose, if your Honor will remember, was to get a definition of that wonderful word that we cannot find out the meaning of. We wanted to know something more about what ‘cohabit’ meant. This was the real purpose of the last case.”

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“We are not here asking a review of the decision of the lower court on the plea of former conviction. We are here claiming before this court, that, after having passed one judgment, the court exhausted its jurisdiction. \* \* \* I understand this court to have said in the Lange case and in other cases of this class, that no man can be twice punished for the same offense.”

Assistant U. S. Attorney-General Maury was the next speaker. He contended that there were practically three judgments in the case, not merely one, and that this implied three distinct offenses. This judgment, rendered by a court of competent jurisdiction, could not be inspected by this court, which was without jurisdiction in the premises.

In answer to questions from the bench—which evidently inclined to the view advanced by Mr. Richards—if it was just to punish a criminal twice or thrice for the same offense, Mr. Maury said: “I care

not what the injustice. I am here to defend this principle. I may agree with your Honor that this was one continuous act, that it was one sentence instead of three, but I say that your Honor cannot go behind that judgment."

Mr. Curtis closed the case. He emphasized the points made by his colleague, declared that it was "nonsense" to talk of three judgments having been rendered, and that nothing could be plainer than that the time during which the offense lasted had nothing whatever to do with the quantity of punishment. "There certainly was but one offense committed by this man. Argument and further discussion will not elucidate the matter any more. I leave it on the face of the judgment."

Less than three weeks later the following telegram came flashing over the wires, gladdening many hearts and homes in Utah:

WASHINGTON, D. C., 3:30 P. M.  
February 7th, 1887.

The Supreme Court today reversed the decision of the Utah Court in the Snow case. The syllabus sets forth that where a District Court in the Territory of Utah refuses to issue a writ of habeas corpus involving a question of personal freedom, an appeal lies to this court from its order and judgment of refusal. The offense of cohabiting with more than one woman, created by the act of March 22nd, 1882, is a continuous offense and not one consisting of an isolated act. After giving the history of the case, the Court says: "On appeal to this court it is held, first, there was but one entire offense for the continuous time; second, the trial court had no jurisdiction to inflict a punishment in respect of more than one of the convictions; third, as want of jurisdiction appeared on the face of the proceedings, the prisoner could be released from imprisonment on habeas corpus; fourth, the order and judgment of the court below must be reversed and the case remanded to that court with direction to grant the writ of habeas corpus prayed for."

This intelligence, so cheering to the great majority of the citizens of the Territory, fell like a funeral pall upon the crusaders, heralding as it did the death of "segregation" and the cessation of all proceedings along that line.\*

Judge Zane submitted gracefully to the decision, as did U. S.

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\* "It will be interesting," said the *Deseret News*, "to place the news of the decision alongside the settings of the Third District Court criminal calendar. There is a striking absence of consistency between them."

Attorney Dickson. No factious opposition was offered to the release of the prisoners unlawfully detained, and as soon as the proper forms could be observed, they were set at liberty.

Apostle Snow, whose release had been ordered by telegraph from Washington, emerged from the Penitentiary at four o'clock in the afternoon of Tuesday the 8th of February. He was met at the gates of the prison by a host of friends, who showered upon him their congratulations and escorted him to Salt Lake City. He was but little changed as the result of his confinement, having been kindly treated during the eleven months that he was an involuntary boarder at the expense of "Uncle Sam." A special privilege accorded him—one not usually granted under such circumstances—was permission to wear his full-flowing hair and beard during the period of his incarceration. They were retained as a precautionary health measure.

The same evening that witnessed his liberation saw also the release of Elder Nicholas H. Groesbeck, of Springville, Utah County, who had been convicted on a two-count indictment for unlawful cohabitation, and on August 2, 1886, fined four hundred and fifty dollars and sentenced to nine months' imprisonment. Within the next day or two, William H. Pidcock and Ambrose Greenwell, of Ogden; William M. Bromley, of American Fork; Isaac Pierce and Royal B. Young, of Salt Lake City, all victims of segregation, regained their freedom. Judge Zane ordered that all such persons who had served their time on first count sentences should be liberated on payment of the fines and costs assessed against them.

It may now be pertinent to inquire why the Supreme Court of the United States, which in May, 1886, evaded the issue in the Snow case and dismissed it without passing upon the important questions involved, was willing in February, 1887, to entertain that case and render a decision therein.

One reason was that the case was brought the second time on a writ of habeas corpus, involving the question of illegal imprisonment, and not upon a writ of error, requesting a review of the entire proceedings. The previous action of the court was largely due to the





David Elias Browning, 55  
Age, 64.



*Charilla Abbott Browning*

*Age 64*





fact that to have assumed jurisdiction of such cases would have paved the way for an alarming increase in its already onerous labors; its calendar being always overloaded, inasmuch that "three years behind time" had become its proverbial condition. Besides, Apostle Snow, when the decision liberating him was rendered, had served all but seven of the eighteen months for which he had been sentenced, and some slight sympathy may have been felt for him. The outrageous injustice of the segregating process was by this time fully apparent, and to have tolerated it any longer would have caused a dark shadow to rest upon the shining disc of American jurisprudence. Moreover, the Edmunds-Tucker bill was about to become law, and with that drastic measure in force, no such monstrosity as "segregation" would be necessary to aid in the suppression of polygamy.

The gradual melting of the ice-floe—if so frigid a metaphor may be used to describe the heated prejudice prevailing against Mormonism at that time—was further manifested in the pardon by President Cleveland of several polygamists, serving terms in the Utah Penitentiary. One of these was Joseph H. Evans, of Salt Lake City. He was nearly seventy years of age, had been imprisoned for over two years, and had conducted himself during that period in the exemplary manner characteristic of the Elders under such circumstances. These facts were all communicated to the President by Attorney-General Garland, who recommended the pardon. It was issued on the 4th of March, and the prisoner released on the 15th of that month.\*

Later in the year, Rudger Clawson and Charles Livingston received amnesty in like manner. The former, who was the first person tried and convicted under the Edmunds Law, had been incarcerated for over three years. Being a young man, his pardon was not so easily obtained as that of Mr. Evans; but the President, appealed to in person by the prisoner's mother, who made a visit to Washington for that purpose, finally yielded to the intercessions in his behalf.

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\* The President said in relation to this object of his clemency, "I am determined that the hardship of his case shall not be cited to show that the Government is inclined to be vindictive in its attempts to extirpate the practice of polygamy."

Rudger Clawson was released on December 12, 1887. Mr. Livingston regained his freedom three days later. He had been in prison about two months, serving out a third of his time. He was street supervisor of Salt Lake City, and owed his liberation to the influence exerted by his non-Mormon friends, chief among whom was Mr. Isadore Morris. Included in the names attached to the petition praying for Mr. Livingston's pardon, was that of Judge C. C. Goodwin, editor of the Salt Lake *Tribune*.



*J. S. Richards*



## CHAPTER XXI.

1882-1887.

THE EDMUNDS-TUCKER LAW—HISTORY OF THE MEASURE FROM ITS INTRODUCTION TO ITS ENACTMENT—WHY THE EDMUNDS LAW DID NOT SATISFY THE ANTI-MORMONS—A LEGISLATIVE COMMISSION WANTED—CONGRESS CONSIDERS VARIOUS BILLS HOSTILE TO UTAH—A PROTEST FROM THE LEGISLATURE—THE NEW EDMUNDS BILL, CONFISCATING MORMON CHURCH PROPERTY, PASSES THE SENATE—THE DEBATE BEFORE THE JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES—A SUBSTITUTE REPORTED WHICH PASSES THE HOUSE—THE SENATE DISAGREES AND DEMANDS A CONFERENCE—THE CONFERENCE COMMITTEE'S SUBSTITUTE BECOMES LAW—WHY PRESIDENT CLEVELAND NEITHER APPROVED NOR VETOED THE EDMUNDS-TUCKER BILL.

THE Edmunds-Tucker Law, enacted by Congress in February, 1887, took its name from Senator George F. Edmunds, of Vermont, and Representative John Randolph Tucker, of Virginia; the former chairman of the Judiciary committee of the Senate, the latter chairman of the Judiciary committee of the House of Representatives. To trace the evolution of the law from its origin to its enactment, will be the author's task in the present chapter.

As the reader is aware, the Edmunds Act, of March 22, 1882, was a disappointment to those who had taken upon themselves "a mission for the social and political regeneration of Utah." That law was not far-reaching enough to satisfy an element which, not content that pains and penalties should be visited upon the polygamous minority among the Mormons, desired something that would effect the destruction or emasculation of the entire Mormon system. "We care nothing for your polygamy," the Gentiles were wont to say in private, to individual Mormons. "It's a good war-cry and serves our purpose by enlisting sympathy for our cause; but it's a mere bagatelle compared with other issues in the irrepressible conflict between our parties. What we most object to is your unity; your political and commercial

solidarity; the obedience you render to your spiritual leaders in temporal affairs. We want you to throw off the yoke of the Priesthood, to do as we do, and be Americans in deed as well as name.”

Such were the frank admissions of those who were reasonable in their opposition to the Mormons, and did not hate them with that deep-rooted rancor that brooked no thought of reconciliation between the two classes of the commonwealth. Even the most radical expressed these sentiments at times. Seldom, however, did such modified utterances—never, so far as polygamy was concerned—find place in their public speeches and documents, particularly those sent abroad and used for political effect at the Nation’s capital. These were always full of polygamy, priestcraft, tyranny and treason. The Mormons were represented as a murderous and immoral community, wallowing in crime and corruption; rebellion was ripe and rampant in Utah, and the Gentiles were in constant terror, trembling for their lives and the safety of their property. It was charges of this kind that led to the enactment of the Edmunds Law, and it was the reiteration of the same calumnies, with the added argument that that law had proved inadequate to the suppression of the alleged evils, that induced Congress to supplement it by a measure still more severe.

The cry for more anti-Mormon legislation began immediately after the enactment of the Edmunds Law, before its effect had been demonstrated—before the crusade under it had commenced.\* “The Edmunds Law is good as far as it goes, but it doesn’t go far enough,” was the burden of the Anti-Mormon song. What they wanted was a legislative commission, appointed by the President of the United States, to govern Utah. This was a favorite recommendation of Governor Murray’s from 1880. The efforts put forth by him and

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\*Many believed there would have been no crusade had the Republican officials in Utah not wished to embarrass the incoming Democratic Administration, and make it difficult for President Cleveland to remove them. Those who took this extreme view pointed to the coincidence that the crusade began simultaneously with Cleveland’s election in the fall of 1884, and was in full blast at the time of his inauguration in March following.

others to encompass their desires in that direction have already been dwelt upon.

Allusion has also been made to the fact that as early as December, 1882, nine months after the Edmunds Law was enacted, and about two years before the inauguration of the crusade, Congress began to consider measures supplemental to that statute. If it took five years for one of these to become law, it was not because those friendly to the proposed legislation were idle. The delay was due to a desire on the part of Congress—many of whose members believed they had exceeded their constitutional powers in passing the Edmunds law—to allow the medicine prescribed to do its work, before foisting upon the overdosed patient another prescription. Perhaps it was hoped that the introduction and discussion of more drastic measures would cause the Mormons to succumb more quickly to the one then in operation; even as the preparation of a stout hickory club, in the presence of a refractory urchin who was withstanding more or less successfully the applications of a birch willow, might be expected to induce his speedier surrender. Had it been with the Mormons, as with the urchin—a matter of mere obstinacy—this probably would have been the issue. That they did not come to terms more readily is referable to one fact, and one alone; they were suffering for a principle.

It was on the 13th of December, 1882, that Senator Edmunds introduced into Congress a bill to amend the statute bearing his name, by adding to it three sections providing as follows:

That in any proceeding or prosecution for bigamy, polygamy, or unlawful cohabitation, the lawful wife of the defendant or person accused should be a competent witness, and might be called by the prosecution and compelled to testify, without the consent of her husband.

That in such proceedings or prosecutions, an attachment for any witness might be issued by the court or United States commissioner, compelling the immediate attendance of said witness, without the prior personal service of a subpoena, provided that in the opinion of the United States District Attorney it was necessary that such attachment should issue.

That any and all statutes limiting the time within which bigamy or polygamy might be prosecuted, should be repealed.

A proviso to this section authorized the President of the United States to grant amnesty to offenders on such conditions and under such limitations as he might think proper.

On the 11th of January, 1883, Senator Edmunds reported the bill with amendments from the Judiciary committee. The most important change proposed was in the section relating to the statute of limitations, extending the time within which polygamous prosecutions might begin to five years. Sections were added relating to the issuance of certificates and the keeping of records of marriages, such records to be subject to inspection by United States officers; to the abolition of woman suffrage in Utah; to the redistricting of the Territory and a new apportionment of the legislative representation by the Governor, Secretary and United States Judges.

The passage of this bill was specially advocated by Judge Van Zile, the anti-Mormon representative at Washington, and opposed by Delegate Caine, assisted by Hon. George Q. Cannon and others. The bill died in the Senate that winter.\*

Its resurrection took place in the following December, Senator Edmunds recalling it to life and introducing it under another name.†

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\* Among those who favored it was Senator John A. Logan, of Illinois, who, referring to polygamy as "a cancer upon the body politic," said the only way to deal with it was "to put the knife to the root of it and cut it out." The Edmunds Act, he said, had not had the desired effect, [it had not been enforced at the time] and he was ready to vote for any further measure "within the purview and meaning of the Constitution." The final action upon the bill was on February 24th, when further consideration of it was postponed till next day. It did not come up again during that Congress.

† On the same day—December 4, 1883—Senator Lapham, of New York, introduced a bill to amend the Organic Act of Utah and change the name of the Territory to Altamont. One of the sections of this bill gave birth in due time to the Industrial Home of Utah, for the establishment of which Congress, two years later, appropriated the sum of forty thousand dollars. The "Home" was opened November 27, 1886, in rented quarters, but in June, 1889, moved into a new building of its own, erected at Salt Lake City with additional means provided by Congress. Its object, as stated by Congressmen, was to provide homes and employment for "homeless and destitute" polygamous wives and their children. The project was a complete and costly failure; there being no "homeless



During the same month the Cullom and Cassidy bills, to abolish the Territorial government and rule Utah by a legislative commission, were introduced into Congress.\* Many other bills followed, providing for the disfranchisement of the Mormons, and for an anti-polygamy amendment to the Constitution. The Poland and Singiser bills, presented about this time, embodied the gist of the test oath afterwards enacted by the Idaho Legislature, disfranchising Mormons for their Church membership. The Woodburn bill, equally if not more severe in its provisions, came later.

Early in January, 1884, the Senate took up the Cullom bill and considered it in committee of the whole. A powerful argument was made against it by Hon. Joseph E. Brown, of Georgia. Neither the Cullom bill nor the Cassidy bill, was destined to become law.

The new Edmunds bill was reported from the Judiciary committee of the Senate late in January, 1884. Mr. Edmunds was then acting President of the Senate, and Senator Hoar had succeeded him as chairman of the committee named. The Massachusetts statesman was averse to the measure, or to that portion of it assailing woman suffrage, but to oblige the Senator from Vermont he, on the 28th of January, reported the bill, reserving his right to oppose it later. Nine more sections had been added to the bill in committee. Besides its former provisions, it now proposed:

That all laws of the Legislative Assembly of Utah providing for the numbering or identifying of votes at any election should be disapproved and annulled.†

That the laws of the Territory conferring jurisdiction upon probate courts other than

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and destitute" characters of that kind for the Government to support. The new building was finally converted into offices for the Utah Commission, etc. The main promoter of the Industrial Home was Mrs. Angie F. Newman, who denied, to the writer, that the main object of its establishment was the one above mentioned.

\* Governor Murray had recommended this in a special report on Utah affairs, sent to the Secretary of the Interior—Hon. Henry M. Teller—a few months before: which report had been transmitted to Congress.

† There was no such law upon the statute books of the Territory. The reverse statement was an anti-Mormon fiction which Senator Edmunds had accepted as a fact.

in respect of the estates of decedents, and the guardianship of infants and persons of unsound mind, should be also abrogated.\*

That hereafter no illegitimate child be entitled to inherit from his or her father, or to receive any distributive share in the paternal estate.

That prosecutions for adultery [which in Utah could only be commenced upon the complaint of the husband or wife] might be instituted in the same way as other prosecutions.†

That the laws of Utah incorporating the Church of Jesus Christ of Latter-day Saints, so far as they might have legal force and validity, [it was doubted that the Church was disincorporated by the Anti-polygamy Act of 1862] be disapproved and annulled, so far as they might preclude the appointment by the President of the United States, with the advice and consent of the Senate, of fourteen trustees to act conjointly with the thirteen trustees of the Church in administering its temporal affairs.

That it should be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations, (i. e. the Mormon Church) obtained or held in violation of section three of the Anti-polygamy Act of 1862;‡ the property so escheated to be disposed of by the Secretary of the Interior and the proceeds applied to the use and benefit of the common schools of the Territory in which it might be located.

That the courts before which such proceedings were instituted should have power in a summary way to compel the production of all books, records and documents belonging to such corporations, their trustees, managers, etc.

That all laws creating, organizing, or continuing the Perpetual Emigrating Fund Company should be disapproved and annulled.

That the Attorney-General of the United States should cause such proceedings to be taken in the Supreme Court of the Territory of Utah as would be proper to dissolve that corporation, pay its debts, and dispose of its property and assets according to law.

Mr. Hoar presented several amendments to the bill, and they were incorporated therein. One of them was the result of a conversation between him and the Delegate from Utah. "Senator Hoar," said Mr. Caine, "if you intend the Government shall seize upon the buildings used by the Mormon people for religious purposes, I wish you would make the bill say so in definite terms. If that is the design,

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\* This provision aimed to take from the probate courts jurisdiction of suits of divorce, which the Poland Law allowed them to exercise concurrently with the District Courts.

† The Utah statute upon this subject had been worded to prevent the wresting of the local laws against adultery and the turning of them against polygamy, as in the days of Judge McKean.

‡ That act limited the value of real estate to be held by churches in the Territories to \$50,000.

the country ought to know it; if not, it ought to be explicitly understood: for if the bill becomes law, the first thing those fellows out there will do will be to seize upon the Temple and the Tabernacle. Oblige me, therefore, by plainly stating the matter one way or the other."

Mr. Hoar heeded the suggestion and plumed himself upon being the author of an amendment so liberal as one providing that no building should be forfeited which was held and occupied exclusively "for purposes of religious worship;" which final phrase was afterwards amended to read "for purposes of the worship of God."

Other amendments modified some of the provisions previously mentioned and added six sections to the bill. Adultery and fornication were made punishable by fine and imprisonment; U. S. Commissioners were given powers equal to those exercised by justices of the peace; the U. S. Marshal and his deputies were invested with powers equal to those possessed by sheriffs and their deputies as peace officers. The office of Territorial Superintendent of District Schools was declared vacant, and a final section restored to lawful wives in Utah the right of dower.

Such was the substance of the bill as it passed the Senate on the 18th of June, 1884, having been debated at intervals during several weeks preceding.\*

At this juncture, the Utah Legislature, alarmed at the measures pending in Congress, addressed to the Nation's law-makers a memorial protesting against the passage of all such bills "until after a full investigation by a Congressional committee." That no such committee was appointed, goes without saying.

The Edmunds-Hoar bill came up in the House of Representatives the day after it passed the Senate. It was ordered to be printed, and this was the last heard of it until a year and a half later. The House,

\* The principal speeches against it were by Senators Brown, Morgan, Bayard, Call and Vest; the principal ones in its favor by Senators Hoar, Ingalls and others. Mr. Edmunds, being in the chair, was not heard from, but of course was in sympathy with the bill and voted among the "yeas" on its passage.

it seems, buried it, but the corpse was exhumed and resuscitated by Mr. Edmunds, who on December 8, 1885, gave it another introduction in the Senate. He reported it from the Judiciary committee on December 21st, and gave notice that he would call it up immediately after the holidays. The bill was now fairly launched upon its checkered career. Though fated to undergo many more changes, it was not destined to experience another defeat.

True to his promise, Senator Edmunds, on January 5, 1886, called up the measure and it was considered by the Senate in committee of the whole. An amendment offered by Senator Hoar, to strike out the anti-woman suffrage section of the bill, was debated by himself and Senator Edmunds and on the following day rejected.\* Senator Van Wyck, of Nebraska, proposed an amendment to abolish the Utah Commission and place its duties upon three officers of the United States Army. He characterized the Commission as a useless, expensive and extravagant institution, which had already extended years beyond the time proposed by the law when it was created. The amendment was rejected.

Senator Morgan, of Alabama, inquired the meaning and scope of that section of the bill providing for the appointment of trustees. Did it mean that the Government was going into partnership with the Mormon Church, to help conduct it? He was entirely opposed to this co-operation. He would prefer to tear up the Church corporation root and branch.

Mr. Edmunds stated that the trustees would deal only with property matters.

Senator Teller thought they would deal with Mormonism in general. He would not vote for such a bill. It bristled everywhere with vengeance and blood. The Mormons had their faults, but they also had their virtues. Polygamy would have died long ago if Federal officials sent to Utah had not irritated and persecuted the Mor-

\* Those who favored woman suffrage were Senators Aldrich, Blair, Brown, Call, Dawes, Dolph, Hoar, Mitchell of Oregon, Palmer, Stanford and Teller.



James Godfrey



mon people. Continuing, Mr. Teller said, referring to a visit to Utah, presumably in the days of Judge McKean:

"I have myself left the court-room in that Territory outraged so that I could not stay there, for fear, as a member of the court, and having a right to be heard at the bar, I should be compelled to rebuke the presiding judge. I have heard from the bench things that could not have been uttered in the State that I represent without taking the judge from the bench. I have heard them on more than one occasion, and they were repeated so as to be an every day occurrence in that court for years. I say that there is no State in this Union and no Territory in this Union that would have submitted to such things a single month, and those people submitted for four straight years."

Mr. Edmunds denied that the bill was oppressive, and said that Mormonism could not be successfully dealt with by "the velvety hand."

The provision to compel husbands and wives to testify against each other provoked an animated debate between Senators Edmunds, Blair and Teller, the latter two opposing it. Said Teller:

"The honorable Senator says there is nothing oppressive in this bill. Does he know of any law that compels the wife to testify against the husband? I do not know of any, and I do not want to live in a community that does compel it. It is undermining and breaking down the very essence of the marriage relation to compel a wife to testify against the husband."

Senator Call, of Florida, denounced the bill in its entirety as unconstitutional and un-Christian.

Senator Cultom said he would vote for it, though he would have preferred the enactment of his own bill to establish a legislative commission in Utah. Congress, he thought, would yet have to come to that, in its treatment of the Mormon question. He replied to Senator Teller's remarks of the day before, and denied that the Mormons had ever been persecuted by the Government.

Mr. Teller answered that he did not say so, but that Government officials had persecuted them. A lively discussion ensued between the two Senators, he of Illinois bitterly attacking the Mormons, and the Coloradoan as vigorously defending them.\*

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\*Said Senator Teller: "The honorable Senator from Illinois seems to think that I am an especial advocate of the Mormon people, and the honorable Senator from Vermont

Mr. Morgan offered an amendment, providing for the disposal of confiscated Mormon property "according to the rules and principles of the common law as in case of the dissolution of a corporation." This amendment being lost, he offered another which was agreed to, exempting from forfeiture the grounds appurtenant to the buildings "occupied exclusively for religious worship."

Senator Vest, of Missouri, who had previously assailed the provision to prevent illegitimate children from inheriting property from their parents, now denounced the proposed arbitrary seizure of Mormon Church property.

Senator Brown created quite a breeze by proposing an amendment to the sections punishing adultery and fornication, the amendment to read: "This and the preceding section shall apply as well to so-called Gentiles as to Mormons in the Territory of Utah."

MR. EDMUNDS.—"I am surprised that the Senator from Georgia should seriously suggest such an amendment. The laws of the United States know no distinctions and make no distinctions between one race, sect, or class in a community, or a religious faith, or anything else, and no court in Utah has ever intimated any such thing. The Senator is being misled by the talk of Mormon newspapers."

yesterday referred to me as tender-hearted. \* \* \* I believe that I may have a weakness, when people complain of oppression, no matter from whence it comes, and a desire to look into it. I ought to have. I come of a race that has had it, and I glory in it. It is not that I propose to wink at the infraction of the law."

Referring to the history of the Mormons in Illinois, he said there were portions of it that neither the Senator from that State nor himself, who once lived there, ought to read without blushing for their people. Of the subsequent experiences of the Saints in their exodus to the Rocky Mountains, he remarked:

"No man can read that history without feeling for them some little sympathy, not that he need necessarily approve of their false ideas, but he can at least recognize the fact that they are men \* \* \* that they possess the noblest of aspirations, the determination to exercise free and uncontrolled their religious belief. It is a virtue of the Anglo-Saxon race. It is a virtue we ought all to be proud of, though sometimes it may be debased in a wicked cause. \* \* \* I will bear testimony to their virtues and I will condemn their vice. I am not to be deterred because somebody says, 'You are a Jack-Mormon.' I will not vote contrary to my conscience and judgment."



MR. BROWN.—“No; it was both Democratic and Republican newspapers, I believe, not published in Mormondom, which gave the version of it I have seen.”

MR. EDMUNDS.—“They may have been Mormon newspapers, notwithstanding.”

MR. BROWN.—“I will ask the Senator from Vermont whether there was not a ruling there to the effect that the term ‘unlawful cohabitation’ did not apply to a Gentile?”

MR. EDMUNDS.—“I have not heard of any such ruling and I do not believe any such ruling was ever made, because it would be perfectly preposterous.”

MR. BROWN.—“I have seen it in several newspapers of good standing, and I have a strong reason to believe that such a ruling was made by a court in Utah.”

MR. EDMUNDS.—“Any judge who made it ought to be impeached.”

MR. BROWN.—“I want to guard against any possible misconception.”

MR. EDMUNDS.—“Do not put such a thing in a statute of the United States.”

MR. BROWN.—“I think the amendment ought to be made for the reason that I believe the law has been misconstrued by judges, and I think the language ought to be made very plain.”

MR. EDMUNDS.—“We will get some better judges there.”

The amendment was rejected.

The provision to compel husband and wife to testify against each other was again debated. Senators Brown and Blair opposing, and Senator Edmunds supporting it. Mr. Blair denounced it as unprecedented, unparalleled and infamous, and Mr. Brown proposed its modification. Said he :

“We are proposing to go beyond what probably any other civilized state in the world has done. \* \* \* Again, so far as the execution of the law is concerned, the Senator certainly does not need this additional legislation. As matters now stand in Utah, it is only necessary to make a *prima facie* case, and a very light one at that, to convict a Mormon. If you arraign him and put him on trial, his conviction follows almost as certainly.”

He went on to say that Federal Judges and District Attorneys were sent to Utah to convict in polygamous cases. Jurors, before being accepted in the Utah courts, were required to swear that they did not believe polygamy right. This alone would show that they were not impartial, but they were even asked by the United States Attorney if they were "in sympathy with the prosecution." If so, there was very little trouble about taking them. The machinery sent to Utah to suppress polygamy was doing its work, giving every doubt against the criminal instead of for him, and while fair and just trials were rare, the Federal officials were certainly carrying out the objects of the legislation against the Mormons. He therefore saw no necessity for breaking down well-established rules of law in order to provide more stringent legislation.

Mr. Edmunds professed to be greatly shocked by this speech of the Senator from Georgia. He did not believe that a juror in Utah had ever been asked by a District Attorney if he was "in sympathy with the prosecution."\*

Mr. Cullom followed with a eulogy of his friend, Judge Zane, testifying to the purity of his character, his ability and impartiality. Mr. Teller concurred in this, and wished it understood that in his remarks upon Utah judges, he not refer to Chief Justice Zane.

Mr. Brown now returned to the assault upon the question of his rejected amendment, making applicable to Gentiles as well as Mormons the provisions against adultery and fornication. He cited, upon the authority of Delegate Caine, an instance in which the Chief Justice of Utah had discharged a Gentile seducer of his sister-in-law †—before the court on a writ of habeas corpus—on the ground that the Edmunds Act was not intended to regulate matters of that kind.

This shocked Mr. Edmunds still more, and he expressed his doubts as to the authenticity, or at least the applicability, of the incident.

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\* Jurors were asked this question at the trial of Angus M. Cannon.

† Rudolph Ames, of Payson.

Mr. Edmunds, in reply to Mr. Morgan, who had spoken against the disincorporation of the Mormon Church (which he believed had already been disincorporated) said that the present bill provided for the annulment of all laws that recognized it as a still existing corporation, so far as those laws might now have force and validity to preclude the appointment of the trustees.\*

Mr. Maxey, of Texas, thought the bill was constitutional and expedient; a position vigorously opposed by Senator Call, of Florida, who offered an amendment to the confiscating section, providing for the return of the escheated property to its donors. The amendment was lost.

The debate now came to a close, and the bill was voted upon and passed by the Senate. There were thirty-eight yeas, and seven nays; absent or not voting thirty-one.† The bill then went to the House, where on the 12th of January, it was referred to the committee on the Judiciary.

The next act in the drama whose prologue and opening scenes have been portrayed, took place in the rooms of that committee, where, in the presence of its chairman, Hon. J. Randolph Tucker, and a sub-committee, the new Edmunds bill was thoroughly discussed at a series of meetings, the first of which was held on the 15th of April and the last on the 5th of May. Delegate Caine, Messrs. F. S. Richards, Joseph A. West and others spoke against the bill and Mr. R. N. Baskin in favor of it. Mr. Richards was in Washington on business connected with the Snow cases. Mr. West

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\* The Senator from Vermont obtained permission to have printed in the *Congressional Record*, as a part of his speech, a paper signed by Z. H. Gurley, at Pleasanton, Iowa, January 8, 1882, and published at Lamoni, Decatur County, in that State. It contained the Revelation on Celestial Marriage and a critical commentary in which Mr. Gurley essayed to prove that polygamy was no part of the true Mormon [Josephite] creed, and was not necessary to salvation. Mr. Edmunds' object was to show that the bill under consideration was not an attack upon the Mormon faith.

† Those voting against the bill were Senators Blair, Call, Gibson, Hampton, Hoar, Morgan and Vance. Mr. Hoar's sole objection to it was the section against woman suffrage, of which he was a staunch advocate.

had been a member of the Utah Legislature, and was at the Capital to counteract efforts that were being made to deprive the members of the late Assembly of their pay.\* The Washington law firm of Chandler and Hunton, with Messrs. Gibson and Boutwell, had been retained to assist the Utah delegate in his fight against the bill. Mr. Baskin, the only speaker on "the Gentile side," was assisted by Judge Goodwin, editor of the Salt Lake *Tribune*; Miss Kate Field, Miss Carrie Owen—the heroine of the Miles case—and others. One of the most important speeches was made by Hon. Jeff. Chandler, who devoted himself to the task of showing that the Government had no right to disestablish a church or interfere in any way with an establishment of religion. It might repeal a charter, where an offense justified such action, but it had no right to confiscate the property of a corporation whose charter was repealed. Property escheated to the Government only in case of an extinction of tenure. The law of 1862, limiting the power of the Church to hold over fifty thousand dollars' worth of real estate, was passed ten years after the Church charter was granted, in which there was no limitation. If that charter was a contract between the Church and the Government, then Congress, reserving no power to repeal or modify it, could not change its capacity to hold property. The limitation was therefore void and could not be enforced.

Mr. Richards sketched the local situation, dwelling particularly upon the Cannon and Snow cases and the cases of Job Pingree and Solomon Edwards,† as showing why men had refused to obey the law "as interpreted by the courts." He showed that it was already

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\* A bill to direct the Secretary of the United States Treasury to withhold compensation to the members and officers of the Utah Legislature until the United States had been reimbursed for all moneys expended on behalf of the Territory since the passage of the Poland Law, had been introduced in the Senate by Mr. Cullom on the 5th of March.

† Messrs. Pingree and Edwards had been convicted of unlawful cohabitation, the former for dining at the house of his plural wife in the presence of her children, and sitting up with her sick child; the latter for calling at the house of his plural wife from whom he had separated, and with whom his relations were not even friendly, long enough to get one of his children which the mother was willing he should take away.



*J W Hoover*



the practice in Utah to compel legal wives to testify against their husbands, and to issue attachments for witnesses without previous subpoena—a practice that Congress was now asked to legalize.

Mr. Gibson addressed himself to the proposition to disincorporate the Mormon Church. In that event the Government would have no more right to the Church's property than he himself would have. It must be distributed to the membership of that Church. It was not held by one trustee-in-trust, but by different congregations.

The chairman asked how much property was held by the Mormon Church corporation, and was answered by Mr. Richards that it was a matter of doubt in Utah, since the enactment of the law of 1862, whether there was such a corporation in existence.

Mr. Gibson went on to show that the representations as to the wealth of the Mormon Church were gross exaggerations. He expressed the hope that Congress would make the provisions against adultery and fornication broad enough to cover everybody and not merely a particular class.

MR. EDEN.—“Does not section 19 apply to everybody?”

MR. GIBSON.—“You would think an act of Congress that says ‘any male person cohabiting with more than one woman,’ would apply to everybody, wouldn't you? But it has not been made to so apply. You know Congress enacts laws and the courts construe them.”

Hon. George S. Boutwell drew attention to a remark made by Mr. Baskin, that he wanted laws enacted that would strike at the foundation of the Mormon “theocratic system,” and asked if Congress was prepared to strike down the Jewish organization and the Catholic Church because they were “theocratic systems.”

Mr. Baskin, who had made the opening address, contended in reply to the speeches that had followed that all such arguments fell to the ground before the fact that the pending bill was designed to meet a peculiar state of affairs, which justified unusual measures. Not that he wanted any law passed that was unconstitutional—he was a Democrat and a strict constructionist of the Constitution—but

he claimed that Congress had ample constitutional power to deal effectually with the Mormon question. Mormon wives ought to be compelled to testify against their husbands because they conspired with their husbands to break the law and cover up crime. He believed that half the male population of Utah was in polygamy. Those who taught polygamy were more guilty than those who practiced it, and should be punished for that "overt act." He cared nothing for "this property matter." He was in favor of a legislative commission. He wanted the Mormons disfranchised until they had surrendered in good faith to the laws. He read extracts from Mormon and Anti-Mormon works, to show that the Mormon Church had tried to found a government entirely independent of the United States, that they exacted from all who passed through the Endowment House oaths of hostility to the Federal Government, and cut the throats of those who apostatized. He was not an enemy to the Mormon people, and had many friends among them, and "they always knew where to find him on these questions."

Mr. West attacked the "fee fiends" of Utah; charging that U. S. marshals, commissioners and other officials had used their powers to enrich themselves and defraud the Government. The Territorial fee bill, once very moderate, had rapidly swollen, until the Legislature of 1886 had been obliged to appropriate over \$70,000—nearly one-third of the entire revenue of the Territory—to defray the expenses of criminal prosecutions under the local laws in the Federal courts.

Mr. Caine refuted the charges made by Mr. Baskin. How could half the male population of Utah be in polygamy, when the United States census of 1880 made the male population of the Territory exceed the female population by nearly five thousand? He denied that the Mormon Church wielded civil authority, and affirmed that Church and State were separate in Utah, though certain men might be prominent and influential in both. He denied that the Mormons "blood atoned" their enemies, and in proof of the statement, pointed to the fact that Mr. Baskin was still alive and an old resident of Utah.



Reverting to the Edmunds Law, Mr. Caine drew forth from Mr. Baskin the apparently inadvertent remark that President John Taylor was under indictment for polygamy, whereupon Mr. Richards thanked him, in behalf of his client, for the information.

And so the discussion went on to the close.

The hope, if it existed, that the committee would report unfavorably upon the pending measure, was doomed to disappointment. True, they decided to report it with an amendment, in the form of a substitute, but the latter, while modifying some of the provisions of the Senate bill, and omitting others, added new ones quite as objectionable. Wives were not compelled, but permitted, to testify against their husbands, except as to confidential communications; the provision to extend the time within which polygamy prosecutions might begin was stricken out, but unlawful cohabitation, or "any polygamous association," was made a felony, punishable by five years' imprisonment; the President of the United States was to appoint the Council of the Utah Legislature, with the probate judges and selectmen of all the counties of the Territory, and the Governor, by and with the advice and consent of the Council was to appoint all justices of the peace, sheriffs and constables; the Nauvoo Legion was disbanded, and a test oath provided for, to exclude from voting, holding office or serving on juries, all who would not agree to obey the anti-polygamy laws. The bill was reported back to the House on the 10th of June.

On the 12th of January, 1887, it was called up for discussion. The first speaker was Hon. Ezra B. Thayer, of Ohio, who favored the bill, having but one objection to it: the anti-woman suffrage provision.

Hon. John T. Caine spoke next, and in the course of his address made telling use of Mr. Tucker's speech against the Edmunds Bill in 1882.\*

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\*The gentleman from Virginia had then said: "I should be false to my sworn duty to support and defend the Constitution of the United States if I voted for a bill which not only violates the Constitution, but makes a precedent of evil omen to the liberties of the

Hon. Ridsen T. Bennett, of North Carolina, attacked the measure as "a bill to put the Mormon Church in liquidation." It was superfluous, atrocious and unconstitutional.

Mr. Reed, of Maine, favored the bill, except as to the provision against woman suffrage.

Hon. J. Randolph Tucker explained the incongruity between his present position in favor of the bill and his former attitude against the Edmunds Bill, by stating that he had changed his mind to agree with the United States Supreme Court decision declaring the Edmunds Law constitutional. This bill, he said, violated neither the spirit nor the letter of the Constitution. He would not vote for it if he thought it trenched upon the conscience even of a Mormon. It was the duty of Congress to prepare Utah to come into the Union, by rooting out and extirpating that which was alien to the genius of American institutions. He was going out of public life, and if he could do something in this direction before his departure, he would feel that his life had not been in vain. He urged the passage of this bill and one proposing an anti-polygamy amendment to the Constitution, in order that the Territory, after becoming a State, might not be able to restore the prohibited practice.

Mr. Scott, of Pennsylvania, asked leave to offer an amendment to the bill, making it of no effect until six months after its approval by the President, thus giving the people of Utah time to call a constitutional convention and apply for admission into the Union upon the basis of a State Constitution prohibiting polygamy.

Mr. Tucker would not listen to this; he wanted to pass the bill "here and now," so that the 12th of January, 1887, might be memorable in the history of the country.

The bill passed the House.

It came up in the Senate on the 14th of January. Mr. Edmunds, who did not appreciate the liberties that had been taken with his bill,

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people. I cannot consent to eradicate one vice by an act of usurpation of power which might involve results of greater magnitude and importance to the happiness of the present and future generations of this great Union."



Myron James



moved that the Senate disagree to the House amendments and ask for a conference thereon. The motion prevailed, and Messrs. Edmunds, Ingalls and Pugh were named as the Senate's conferees. The House named Messrs. Tucker, Collins and Taylor. Mr. Tucker had met with the conference committee but once, when he was summoned from Washington by the terrible news of the death of his daughter, who had been thrown from a carriage and fatally injured. Mr. N. J. Hammond, of Georgia, was appointed to act in his stead.

The result of the conference committee's deliberations was the presentation in the House, on the 15th of February, of a report embodying a substitute for the Senate and House bills. This substitute, which became the Edmunds-Tucker Act—for no further amendments were made—read as follows:

*A bill to amend an act entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to Bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two.*

LAWFUL HUSBAND OR WIFE MAY TESTIFY.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That in any proceeding or examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called, but shall not be compelled to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be; and such witness shall not be permitted to testify as to any statement or communication made by either husband or wife to each other, during the existence of the marriage relation, deemed confidential at common law.

ATTACHMENT FOR WITNESSES WITHOUT SUBPÆNA.

SEC. 2. That in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, whether before a United States commissioner, justice, judge, a grand jury, or any court, an attachment for any witness may be issued by the court, judge, or commissioner, without a previous subpœna, compelling the immediate attendance of such witness, when it shall appear by oath or affirmation, to the commissioner, justice, judge, or court, as the case may be, that there is reasonable ground to believe that such witness will unlawfully fail to obey a subpœna issued and served in the usual course in such cases; and in such case the usual witness fee shall be paid to such witness so attached; *Provided*, that the person so attached may at any time

secure his or her discharge from custody by executing a recognizance, with sufficient surety, conditioned for the appearance of such person at the proper time, as a witness in the cause or proceeding wherein the attachment may be issued.

ADULTERY.

SEC. 3. That whoever commits adultery shall be punished by imprisonment in the penitentiary not exceeding three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery.

INCEST.

SEC. 4. That if any person related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction thereof, shall be punished by imprisonment in the penitentiary not less than three years and not more than fifteen years.

FORNICATION.

SEC. 5. That if an unmarried man or woman commit fornication, each of them shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars.

PROSECUTION FOR ADULTERY.

SEC. 6. That all laws of the Legislative Assembly of the Territory of Utah which provide that prosecutions for adultery can only be commenced on the complaint of the husband or wife, are hereby disapproved and annulled; and all prosecutions for adultery may hereafter be instituted in the same way that prosecutions for other crimes are.

COMMISSIONERS HAVE SAME POWERS AS JUSTICES OF THE PEACE AND CIRCUIT COURT  
COMMISSIONERS.

SEC. 7. That commissioners appointed by the supreme court and district courts in the Territory of Utah shall possess and may exercise all the powers and jurisdiction that are or may be possessed or exercised by justices of the peace in said Territory under the laws thereof, and the same powers conferred by law on commissioners appointed by circuit courts of the United States.

MARSHALS MADE PEACE OFFICERS AND EMPOWERED TO TAKE RECOGNIZANCES.

SEC. 8. That the marshal of said Territory of Utah, and his deputies, shall possess and may exercise all the powers in executing the laws of the United States or of said Territory possessed and exercised by sheriffs, constables, and their deputies as peace officers; and each of them shall cause all offenders against the law in his view, to enter into recognizance to keep the peace and to appear at the next term of the court having

jurisdiction of the case, and to commit to jail in case of failure to give such recognizance. They shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections.

MARRIAGE CEREMONIES AND CERTIFICATES THEREOF—PENALTY FOR VIOLATING PROVISIONS OF THIS SECTION.

SEC. 9. That every ceremony of marriage, or in the nature of a marriage ceremony, of any kind, in any of the Territories of the United States, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full names of each of the parties concerned, and the full name of every officer, priest and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony filed in the office of the probate court, or, if there be none, in the office of the court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to inspection as other public records. Such certificate, or the record thereof, or a duly certified copy of such record, shall be *prima facie* evidence of the facts required by this act to be stated therein, in any proceeding, civil or criminal, in which the matter shall be drawn in question. Any person who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than \$1,000, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court.

PROOF OF MARRIAGE NOT CHANGED.

SEC. 10. That nothing in this act shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence now legally admissible for that purpose.

ILLEGITIMATE CHILDREN DISINHERITED.

SEC. 11. That the laws enacted by the Legislative Assembly of the Territory of Utah which provide for or recognize the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father of any such illegitimate child, are hereby disapproved and annulled: and no illegitimate child shall hereafter be entitled to inherit from his or her father or to receive any distributive share in the estate of his or her father: *Provided*, that this section shall not apply to any illegitimate child born within twelve months after the passage of this act, nor to any child made legitimate by the seventh section of the act entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, 1882.

JURISDICTION OF PROBATE COURTS LIMITED TO ESTATES OF DECEASED PERSONS AND GUARDIANSHIP.

SEC. 12. That the laws enacted by the Legislative Assembly of the Territory of Utah, conferring jurisdiction upon probate courts, or the judges thereof, or any of them,

in said Territory, other than in respect of the estates of deceased persons, and in respect of the guardianship of the persons and property of infants, and in respect of the persons and property of persons not of sound mind, are hereby disapproved and annulled, and no probate court or judge of probate shall exercise any jurisdiction other than in respect of the matters aforesaid, except as a member of a county court; and every such jurisdiction so by force of this act withdrawn from the said probate courts or judges shall be had and exercised by the district courts of said Territory respectively.

PROPERTY ESCHEATED UNDER ACT OF 1862 TO GO TO COMMON SCHOOLS.

SEC. 13. That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be; *Provided*, that no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground, shall be forfeited.

PRODUCTION OF CORPORATE BOOKS AND PAPERS.

SEC. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess of the amount limited by law, the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever.

PERPETUAL EMIGRATING FUND COMPANY DISSOLVED.

SEC. 15. That all laws of the Legislative Assembly of the Territory of Utah, or of the so-called government of the State of Deseret, creating, organizing, amending, or continuing the corporation or association called the Perpetual Emigrating Fund Company, are hereby disapproved and annulled; and the said corporation, in so far as it may now have, or pretend to have, any legal existence, is hereby dissolved; and it shall not be lawful for the Legislative Assembly of the Territory of Utah to create, organize, or in any manner recognize any such corporation or association, or to pass any law for the purpose of or operating to accomplish the bringing of persons into the said Territory for any purpose whatsoever.

PROPERTY OF THE P. E. FUND COMPANY ESCHEATED.

SEC. 16. That it shall be the duty of the Attorney-General of the United States to





*J. B. Gordon*



cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to carry into effect the provisions of the preceding section, and pay the debts and dispose of the property and assets of said corporation according to law. Said property and assets, in excess of the debts and the amount of any lawful claims established by the court against the same, shall escheat to the United States, and shall be taken, invested, and disposed of by the Secretary of the Interior, under the direction of the President of the United States, for the benefit of common schools in said Territory.

THE CHURCH DISINCORPORATED : SUPREME COURT TO WIND UP ITS AFFAIRS.

SEC. 17. That the acts of the Legislative Assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-day Saints, and the ordinance of the so called General Assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have, or pretend to have, any legal existence, is hereby dissolved. That it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages connected therewith, and burial grounds, and of the description mentioned in the proviso to section thirteen of this act, and in section twenty-six of this act, to the respective trustees mentioned in section twenty-six of this act: and for the purposes of this section said court shall have all the powers of a court of equity.

THE RIGHT OF DOWER.

SEC. 18. (a) A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless she shall have lawfully released her right thereto.

(b) The widow of any alien who at the time of his death shall be entitled by law to hold any real estate, if she be an inhabitant of the Territory at the time of such death, shall be entitled to dower of such estate in the same manner as if such alien had been a native citizen.

(c) If a husband seized of an estate of inheritance in lands exchanges them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange: and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

(d) When a person seized of an estate of inheritance in lands shall have executed a mortgage, or other conveyance in the nature of mortgage, of such estate, before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged or so conveyed, as against every person except the mortgagee or grantee in such conveyance and those claiming under him.

(e) Where a husband shall purchase lands during coverture, and shall at the same time execute a mortgage, or other conveyance in the nature of mortgage, of his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or grantee in such conveyance or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower in such lands as against all other persons.

(f) Where in such case the mortgagee, or such grantee or those claiming under him, shall, after the death of the husband or such widow, cause the land mortgaged or so conveyed to be sold, either under a power of sale contained in the mortgage or such conveyance or by virtue of the decree of a court, if any surplus shall remain after payment of the moneys due on such mortgage or conveyance, and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus for her life as her dower.

(g) A widow shall not be endowed of lands conveyed to her husband by way of mortgage unless he acquire an absolute estate therein during the marriage period.

(h) In case of divorce dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

PROBATE JUDGES MADE APPOINTIVE BY THE PRESIDENT.

SEC. 19. That hereafter the judge of probate in each county within the Territory of Utah, provided for by the existing laws thereof, shall be appointed by the President of the United States, by and with the advice and consent of the Senate; and so much of the laws of said Territory as provide for the election of such judge by the Legislative Assembly are hereby disapproved and annulled.

FEMALE SUFFRAGE ABOLISHED.

SEC. 20. That it shall not be lawful for any female to vote at any election hereafter held in the Territory of Utah, for any public purpose whatever, and no such vote shall be received or counted or given effect in any manner whatever; and any and every act of the Legislative Assembly of the Territory of Utah providing for or allowing the registration or voting by females is hereby annulled.

SECRET BALLOT.

SEC. 21. That all laws of the Legislative Assembly of the Territory of Utah which provide for numbering or identifying the votes of the electors at any election in said Territory are hereby disapproved and annulled; but the foregoing provisions shall not preclude the lawful registration of voters, or any other provisions for securing fair elections which do not involve the disclosure of the candidates for whom any particular elector shall have voted.

RE-DISTRICTING THE TERRITORY; ONLY CITIZENS OF THE UNITED STATES ENTITLED TO VOTE.

SEC. 22. That the existing election districts and apportionments of representation concerning the members of the Legislative Assembly of the Territory of Utah are hereby abolished, and it shall be the duty of the Governor, Territorial Secretary, and the Board of Commissioners mentioned in section 9 of the act of Congress approved March twenty-



George D Snell  
Born Mar 18<sup>th</sup> 1836



second, eighteen hundred and eighty-two, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," in said Territory, forthwith to re-district said Territory and apportion representation in the same in such manner as to provide, as nearly as may be, for an equal representation of the people (excepting Indians not taxed), being citizens of the United States, according to numbers, in said Legislative Assembly, and to the number of members of the council and house of representatives respectively, as now established by law: and a record of the establishment of such new districts and the apportionment of representation thereto shall be made in the office of the Secretary of said Territory, and such establishment and representation shall continue until Congress shall otherwise provide: and no persons other than citizens of the United States otherwise qualified shall be entitled to vote at any election in said Territory.

UTAH COMMISSION CONTINUED.

SEC. 23. That the provisions of section nine of said act approved March twenty-second, eighteen hundred and eighty-two, in regard to registration and election officers, and the registration of voters, and the conduct of elections, and the powers and duties of the Board therein mentioned, shall continue and remain operative until the provisions and laws therein referred to to be made and enacted by the Legislative Assembly of said Territory of Utah shall have been made and enacted by said Assembly and shall have been approved by Congress.

THE TEST OATH.

SEC. 24. That every male person twenty-one years of age resident in the Territory of Utah shall, as a condition-precident 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 twenty-one years of age, and has resided in the Territory of Utah for six months then last passed and in the precinct for one month immediately preceding the date thereof, and that he is a native born (or naturalized, as the case may be) citizen of the United States, and further state in each oath or affirmation his full name, with his age, place of business, his status, whether single or married, and, if married, the name of his lawful wife, and that he will support the Constitution of the United States and will faithfully obey the laws thereof, and especially obey the act of Congress approved March twenty-second, eighteen hundred and eighty-two, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," and will also obey this act in respect of the crimes in said act defined and forbidden, and that he will not, directly or indirectly, aid or abet, counsel or advise, any other person to commit any of said crimes. Such registration officer is authorized to administer said oath or affirmation; and all such oaths or affirmations shall be by him delivered to the clerk of the probate court of the proper county, and shall be deemed public records therein. But if any election shall occur in said Territory before the next revision of the registration lists as required by law, the said oath or affirmation shall be administered by the presiding judge of the election precinct on or before the day of election. As a condition-precident to the right to hold

office in or under said Territory, the officer before entering on the duties of his office, shall take and subscribe an oath or affirmation declaring his full name, with his age, place of business, his status, whether married or single, and, if married, the name of his lawful wife, and that he will support the Constitution of the United States and will faithfully obey the laws thereof, and especially will obey the act of Congress approved March twenty-second, eighteen hundred and eighty-two, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," and will also obey this act in respect of the crimes in said act defined and forbidden, and that he will not, directly or indirectly, aid or abet, counsel or advise, any other person to commit any of said crimes: which oath or affirmation shall be recorded in the proper office and endorsed on the commission or certificate of appointment. All grand and petit jurors in said Territory shall take the same oath or affirmation to be administered, in writing or orally, in the proper court. No person shall be entitled to vote in any election in said Territory, or be capable of jury service, or hold any office of trust or emolument in said Territory who shall not have taken the oath or affirmation aforesaid. No person who shall have been convicted of any crime under this act, or under the act of Congress aforesaid, approved March twenty-second, 1882, or who shall be a polygamist, or who shall associate or cohabit polygamously with persons of the other sex, shall be entitled to vote in any election in said Territory, or be capable of jury service, or to hold any office of trust or emolument in said Territory.

#### COMMISSIONER OF SCHOOLS.

SEC. 25. That the office of Territorial superintendent of district schools created by the laws of Utah is hereby abolished; and it shall be the duty of the supreme court of said Territory to appoint a commissioner of schools, who shall possess and exercise all the powers and duties heretofore imposed by the laws of said Territory upon the Territorial superintendent of district schools, and who shall receive the same salary and compensation, which shall be paid out of the treasury of said Territory; and the laws of the Territory of Utah providing for the method of election and appointment of such Territorial superintendent of district schools are hereby suspended until the further action of Congress shall be had in respect thereto. The said superintendent shall have power to prohibit the use in any district school of any book of sectarian character or otherwise unsuitable. Said superintendent shall collect and classify statistics and other information respecting the district and other schools in said Territory, showing their progress, the whole number of children of school age, the number who attend school in each year in the respective counties, the average length of time of their attendance, the number of teachers and the compensation paid to the same, the number of teachers who are Mormons, the number who are so-called Gentiles, the number of children of Mormon parents and the number of children of so-called Gentile parents, and their respective average attendance at school; all of which statistics and information shall be annually reported to Congress, through the Governor of said Territory, and the Department of the Interior.

#### CHURCHES MAY HOLD REAL PROPERTY.

SEC. 26. That all religious societies, sects and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a





Joseph S. Samner



Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

## THE MILITIA.

SEC. 27. That all laws passed by the so-called State of Deseret and by the Legislative Assembly of the Territory of Utah for the organization of the militia thereof or for the creation of the Nauvoo Legion are hereby annulled and declared of no effect; and the militia of Utah shall be organized and subjected in all respects to the laws of the United States regulating the militia in the territories: *Provided*, however, that all general officers of the militia shall be appointed by the Governor of the Territory, by and with the advice and consent of the Council thereof. The Legislative Assembly of Utah shall have power to pass laws for organizing the militia thereof, subject to the approval of Congress.

The conference committee, in their report, moved that this bill pass. On the 17th of February the report was considered in the House.

Mr. Bennett again attacked the bill as being a wrongful invasion of the rights of conscience, and expressed surprise that Mr. Hammond, whose State [Georgia] had bled from just such legislation during the reconstruction period, could support it.

Mr. Eden opposed the bill and Mr. Hammond defended it. He would not concede that there was any parallel between Utah and the South.

The previous question was ordered, the report of the conference committee adopted, and the bill passed. Yeas, 202; nays, 40; not voting, 76.\*

Next day—February 18th—the same report was considered by the Senate; the first speaker being Senator Vest, who said:

“As a matter of course this bill will become a law, but I cannot vote for it. I am well aware what the public sentiment of the country is, but that makes no sort of impression on me, with my convictions as a legislator, nor will any amount of criticism on my action. I cannot vote for this bill because in my judgment it violates the fundamental principles of the Constitution of the United States. \* \* \* It is naked, simple, bold

\*Among the negative votes was Mr. O'Hara, a negro and a Catholic. Said Delegate Caine, referring to the passage of the bill, “There was but one Republican who voted against it. He was a colored man, but he proved himself the whitest of them all.”

confiscation and nothing else. \* \* \* The whole spirit of this test-oath legislation is wrong ; it is contrary to the principles and spirit of our republican institutions: and whenever the time comes in the Territories or States of this Union that test-oaths are necessary to preserve republican institutions, then republicanism is at an end."

Mr. Edmunds declared that the Constitution itself incorporated test-oaths, and every Senator, or other officer of the United States, even to the President, was obliged to take such an oath before he could participate in the Government.

MR. VEST.—“ The President of the United States and each member of Congress swears to support the Constitution of the United States; but who ever heard before that that was a test-oath? A test-oath \* \* \* is one that tests the conscience of the party as to a particular act or belief.”

Mr. Ingalls thought the bill in its present shape more liberal, humane, just and generous in its provisions than when passed originally by the Senate.

Mr. Call said that no language could express its wickedness and moral enormity. It required a man to become a fiend in human form in order to be a citizen of the United States.

Mr. Butler regarded the bill as unconstitutional. He would not support it.

Mr. Hoar assailed the section against woman suffrage, and stated that its retention in the bill would cause him to vote against it.

Mr. Blair, also a woman suffragist, said he should not vote either way.

Mr. Dolph decided to support the measure, though his objections to it were similar to those of the two gentlemen last named.

The bill passed the Senate by the following vote: Yeas, thirty-seven; nays, thirteen; absent or not voting, twenty-six.

As soon as practicable the bill was sent to the President. He neither approved nor vetoed it, and on the 3rd of March, ten days after its reception by him, it became a law without his signature. Mr. Cleveland was opposed to the measure, believing, with many eminent jurists, that it was violative of the Constitution. He knew, how-



*Dr. N. Hinckley*



ever, that the country demanded some such legislation, and feared, it was said, that if he vetoed this bill, a worse one would follow. "Tell your people," said he to Delegate Caine, "that the law shall not be harshly administered. While it is my duty to see it enforced, I promise that it shall be executed as other laws are, impartially, and in the spirit of justice and humanity."

## CHAPTER XXII.

1887-1888.

THE EDMUNDS-TUCKER LAW FAILS TO SATISFY THE ANTI-MORMONS—FIRST ELECTIONS UNDER THE NEW STATUTE—THE TERRITORY REAPPORTIONED—UTAH AGAIN ASKS FOR STATEHOOD—SHE PROPOSES TO PROHIBIT POLYGAMY—THE GENTILES REFUSE TO PARTICIPATE IN THE CONSTITUTIONAL CONVENTION—THE CONSTITUTION RATIFIED BY THE VOTES OF THE PEOPLE—DEATH OF PRESIDENT JOHN TAYLOR—PROCEEDINGS FOR THE CONFISCATION OF MORMON CHURCH PROPERTY—A RECEIVER APPOINTED—SEIZURES OF REAL ESTATE AND PERSONALTY—PROCEEDINGS BEFORE THE EXAMINER—THE CHURCH MAKES TEMPORARY SURRENDER OF ITS PROPERTY PENDING FINAL ADJUDICATION—THE UTAH QUESTION AGAIN IN CONGRESS—THE SENATE RESOLUTIONS AGAINST STATEHOOD.

NEEDLESS is it to inform the reader that the Edmunds-Tucker law did not satisfy the Anti-Mormons of Utah. Their pet project for the government of the Territory was a legislative commission. For this they had labored for years; the latest effort in that direction being made by Mr. Baskin and his associates as representatives of the "Loyal League." Though Mr. Tucker and his committee were not persuaded to incorporate a provision for such a commission in the bill reported by them to the House, they did include something akin thereto. They made the Council branch of the Legislature, with the probate judges and selectmen of all the counties, appointive by the President of the United States, and gave the Governor of Utah authority to appoint all justices of the peace, sheriffs and constables. But the Senate and conference committee would not agree to this arrangement, except in so far as the appointment of probate judges was concerned, and the objectionable feature, with others, was stricken from the bill before final action was taken thereon.

This so-called "emasculatation" of the measure was very dis-





Edwin G. Woolley



pleasing to those who, after seven years of persistent toil—the same period that Jacob served for his beloved Rachel, only to be given the ophthalmic Leah as a bride—saw the darling object of their desires still withheld. The leading spirits of the “Loyal League” were up in arms. President Cleveland, Senators Brown, Vest, Teller and Call, Representatives Bennett and Collins, were all “Jack Mormons;” the President for not approving the bill even in its modified form, the others for daring to attack it in Congress. Even Senators Edmunds and Ingalls were taken to task for suggesting or acquiescing in the aforesaid “emasculatation.”

The Utah Commission, after learning, on the 4th of March, by telegraphic correspondence with Attorney-General Garland, that the Edmunds-Tucker bill was a law, went to work to prepare for the local elections under that statute. The chairman of the Commission was now Hon. A. B. Carlton, vice Hon. Alexander Ramsey, resigned. The latter had been succeeded, as a member of the Commission, early in 1886, by General John A. McClernand, of Illinois. Other changes in the personnel of the board were as follows: A. B. Williams, of Arkansas, occupied the place of James R. Pettigrew, deceased, and Arthur L. Thomas, of Utah, had succeeded A. S. Paddock, resigned. Messrs. Williams and Thomas had received their appointments in October and December of the year named. William C. Hall, of Utah, had succeeded Mr. Thomas as Territorial Secretary and ex officio Secretary of the Commission.

There were two members of the board, as thus constituted, who were veritable thorns in the side of the Anti-Mormon party. They were not in sympathy with the radicals of that organization and would not submit to their dictation. The two in question were Messrs. Carlton and McClernand. Who and what General McClernand was, the history of his country testifies. It is sufficient to say that in Utah he was the same brave, rugged, honest soul—though bearing the added weight of a quarter of a century—as when fighting with Grant in the trenches of Vicksburg. Of Judge Carlton, we need but add to what has already been said concerning him, that he,

too, was an honest man, independent and courageous, who won the ill will of the extremists among the Liberals, not because he sympathized with their opponents, or was one whit less anxious than other Gentiles for the suppression of polygamy and the "Americanization" of Utah, but because he had his own views as to how those ends should be attained. He did not believe it necessary to enslave the Mormons in order to redeem them.

The first election held under the new statute was the municipal election of Brigham City, the home of Apostle Lorenzo Snow. It took place on Monday, March 7, 1887.\* Since the decision by the Supreme Court of the United States in the case of *Murphy vs. Ramsay*, the Utah Commission had not claimed the right to *instruct* the registration and election officers by them appointed. They now merely *advised* them as to how they should perform their duties. Chairman Carlton, in answer to an inquiry from Mr. George R. Chase, the presiding judge of the Brigham City election, suggested that as a condition precedent to voting, each applicant for that privilege be required to subscribe to the following oath:

TERRITORY OF UTAH, }  
 County of——— } ss.

I, —————, being duly sworn (or affirmed), depose and say that I am over twenty-one years of age, that I have resided in the Territory of Utah for six months last past, and in this precinct for one month immediately preceding the date hereof; and that I am a native born (or naturalized, as the case may be) citizen of the United States; that my full name is —————; that I am ——— years of age; that my place of business is —————; that I am a (single or) married 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, and especially will obey the act of Congress approved March 22, 1882, entitled, "An act to amend Section 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes," and that I will also obey the act of Congress of March 3, 1887, entitled, "An act to amend an act entitled 'An act to amend Section 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes,' " approved March 22, 1882, in respect of the crimes in said act defined and forbidden, and that I will not, directly or indirectly, aid or abet,

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\*The first marriage under the Edmunds-Tucker law was performed by Chief Justice Zane at Salt Lake City, the day before this election. The contracting parties were Mr. William T. Pike, of Mill Creek, and Miss Hannah Christine Wallen, of Salt Lake City.

counsel or advise, any other person to commit any of said crimes defined by acts of Congress as polygamy, bigamy, unlawful cohabitation, incest, adultery and fornication. And I further swear (or affirm) that I am not a bigamist or polygamist, and that I have not been convicted of any crime under the act of Congress entitled "An act to amend Section 5352 of the Revised Statutes of the United States, in reference to bigamy and for other purposes," approved March 22, 1882; nor under the act amendatory thereof, of March 3, 1887; and I do not associate or cohabit polygamously with persons of the other sex.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 188—.

\_\_\_\_\_  
\_\_\_\_\_

The Liberal leaders, not content with a test-oath formulated in exact accordance with the law, wanted certain expletives and amplifications inserted; but the Commission would not consent to it. However willing the majority of the board may have been, none were anxious for another rebuff from the Supreme Court of the United States, such as that given in the Murphy-Ramsay decision.

Some hope had been entertained by the Liberals that their opponents, bearing in mind the attitude of most of the Elders when arraigned for polygamy or unlawful cohabitation, would refuse to "promise to obey;" that is, decline to take the test-oath, and thus fail to register for the election. In this, however, they were disappointed. Monogamous Mormons—the overwhelming majority in the Church—stood upon quite another plane to that occupied by their polygamous confreres. They saw no reason why they should not register and cast their ballots. A few Mormons and some Gentiles refused to be sworn, but eventually the whole population, eligible for enrollment, registered, not only at Brigham City, but throughout the Territory.

The day before the election—Sunday, March 6th—a number of Liberals attended the regular Tabernacle services at Brigham City, being curious to know what Apostle Snow, who was expected to preach, would say upon the subject of registering and voting. In his remarks he referred but once to the political situation, saying that each man must use his own judgment about subscribing to the test-oath.

The polls on the morning of the election were thronged at an early hour, especially by voters of the People's party, but owing to the obstructive tactics of their opponents many of them failed to get their names upon the voting lists. The Liberal registrars and election judges—always in the majority—did pretty much as they pleased; looking to the leaders of their party rather than to the Utah Commission for guidance in the conduct of the election. Here are some of the questions—utterly unauthorized—propounded to Mormon citizens willing to take the test-oath, before they were allowed to vote:

“Are you a member of any organization whose laws, revelations or instructions you would obey before you would the laws of the United States against the crimes of bigamy and polygamy?”

“Where the decisions of the courts come in conflict, as regards these crimes, with the instructions or laws of your organization, which would you obey?”

“Do you now regard as binding upon your honor or conscience any oath that you have formerly taken that is in conflict with the one to which you have just sworn and subscribed?”

One man, indignant at being subjected to this inquisition, refused to answer, and, though fully entitled to register, was challenged and his name rejected. Subsequently, by advice of the Utah Commission, he was accepted and enrolled, but not in time to vote on the 7th of March.

Two ladies, wishing to test the legality of the anti-woman suffrage provision of the new law, applied for and were refused registration. In these cases the action of the registrars was sustained.

The issue of the election was the usual overwhelming victory for the People's party.\*

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\* On the same day the test oath was administered to jurors in the District Court at Salt Lake City. Judges Zane, Henderson and Boreman, U. S. Attorney Dickson and his assistants, Clerks Zane and McMillan, U. S. Marshal Dyer and his deputies, had all taken it previously. The first Gentile juror sworn was William H. Bowers, of Salt Lake City; the first Mormon juror, Richard Howe, of South Cottonwood. The faces of the

On the 19th of March the Utah Commission completed its "Circular for the Information of Registration Officers," and soon afterwards it was printed and scattered all over the Territory. Parts of the circular greatly displeased the Liberal leaders, whose request for the insertion of extra matter into the test-oath had been ignored by the Commission. Another rock of offense was a clause in the circular specifying the disqualifications of voters, adhering strictly to the provisions of the law, and closing with these words: "No opinions which they [the voters] may entertain upon questions of religion or Church polity should be the subject of inquiry or exclusion of any elector." A change in the form of the test-oath, as published, was requested by leading Liberals, but the Commission would not yield the point.

The next act of the board, in conjunction with the Governor and Secretary, was the redistricting of the Territory. They met on the evening of the 16th of May and adopted the following apportionment of election districts:

## REPRESENTATIVE DISTRICTS.

- No. 1. All of Rich County and Logan. Hyde Park, Smithfield and Providence precincts, Cache County.
- No. 2. Balance of Cache County.
- No. 3. Box Elder County.
- No. 4. Ogden precinct. Weber County.
- No. 5. Balance of Weber County.
- No. 6. Morgan County, Davis County and Pleasant Green, Hunter and North Point precincts in Salt Lake County, and Henneferville precinct. Summit County.
- No. 7. Summit County (except Henneferville, Peoa, Woodland, and Kamas), and Mountain Dell and Sugar House Ward in Salt Lake County.
- No. 8. All of Tooele County. Tintic precinct, Juab County, and Bingham precinct, Salt Lake County.
- No. 9. First Salt Lake City precinct.
- No. 10. Second Salt Lake City precinct.

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Liberals present were a study while the oath was being read to Mr. Howe, and their countenances visibly fell when at the close he answered: "Yes, sir." One Gentile refused to be sworn, but on its being explained to him, changed his mind. Several Mormons refused to take the oath, saying they wanted more time to think about it.

No. 11. Third and Fourth Salt Lake City precincts, and Brighton and Granger precincts in Salt Lake County.

No. 12. Fifth Salt Lake City precinct, including Fort Douglas.

No. 13. North Jordan, West Jordan, South Jordan, Fort Herriman, Riverton, Bluff Dale, South Cottonwood, Union and Sandy precincts, in Salt Lake County.

No. 14. Farmers, Mill Creek, East Mill Creek, Big Cottonwood, Little Cottonwood, Butler, Granite, Draper and Silver precincts, in Salt Lake County.

No. 15. Lehi, Cedar Fort, Alpine, Goshen, Santaquin, Spring Lake, Payson and Spanish Fork precincts in Utah County.

No. 16. American Fork, Pleasant Grove, Provo Bench, and Provo precincts, in Utah County.

No. 17. Springville, Thistle, Pleasant Valley Junction, Benjamin and Salem precincts in Utah County : all of Emery County, and Winter Quarters precinct in Sanpete County.

No. 18. All of Uintah and Wasatch Counties, and Kamas, Woodland and Peoa precincts in Summit County.

No. 19. Nephi, Mona, Levan and Juab precincts of Juab County and all of Millard County.

No. 20. Thistle, Fairview, Mount Pleasant, Spring City, Moroni, Fountain Green, and Ephriam precincts in Sanpete County.

No. 21. Chester, Wales, Manti, Pettyville, Mayfield, Gunnison, Fayette and Freedom precincts, in Sanpete County, and all of Sevier County.

No. 22. All of Beaver and Piute Counties.

No. 23. All of Iron and Garfield Counties, New Harmony precinct in Washington County and Bluff City and McElmo precincts in San Juan County.

No. 24. All of Kane and the balance of Washington County.

#### COUNCIL DISTRICTS.

No. 1.—1st and 6th Representative Districts.

No. 2.—2nd and 3rd Representative Districts.

No. 3.—4th and 5th Representative Districts.

No. 4.—7th and 9th Representative Districts.

No. 5.—10th and 12th Representative Districts.

No. 6.—11th and 14th Representative Districts.

No. 7.—8th and 13th Representative Districts.

No. 8.—15th and 16th Representative Districts.

No. 9.—17th and 18th Representative Districts.

No. 10.—19th and 20th Representative Districts.

No. 11.—21st and 22nd Representative Districts.

No. 12.—23rd and 24th Representative Districts.

The apportionment was such as to give no reasonable cause for complaint to members of the minority party.

The August election resulted in the return of thirty-one Mor-



mons and five Gentiles to the Legislature. Of the Territorial, county and precinct officers, a large majority of those elected were Mormons; all these, as a matter of course, monogamists.

June of this year witnessed another attempt—the fifth of its kind—to secure for Utah the boon of Statehood. The movement was especially notable from the fact that it was proposed by the Mormons—the Gentiles refusing to take any part in the proceedings—to insert in the State Constitution an article prohibiting and punishing polygamy.

Why did the Gentiles refuse to participate? Either they did not believe the Mormons sincere, or did not regard polygamy as the vital issue in the pending controversy. Judge Carlton took the view that they feared the Mormons were sincere, and might succeed in warding off further Anti-Mormon legislation by abandoning polygamy.

The People's party held mass meetings in the various counties and elected delegates to the Constitutional Convention. All citizens had been invited to join in the mass conventions, with the understanding that if they so co-operated, each political party should receive recognition and be accorded its fair quota of representation in the Constitutional Convention. None participated, however, but members of the People's party; though a few Liberals attended the mass meetings.

The Constitutional Convention assembled at the City Hall, Salt Lake City, on the 30th of June. Sixty-nine delegates were present from the following-named counties: Beaver, Box Elder, Cache, Davis, Emery, Iron, San Juan, Juab, Kane, Millard, Morgan, Piute, Salt Lake, San Pete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington and Weber. Garfield and Rich Counties were not represented. Hon. John T. Caine, of Salt Lake County, was chosen chairman; Hon. E. G. Woolley, of Washington County, and Hon. J. T. Hammond, of Cache County, vice-chairmen; Heber M. Wells, secretary; R. W. Sloan, assistant secretary; Thomas Harris, sergeant-at-arms, and Heber S. Cutler, messenger, of the Convention.

Hon. Franklin D. Richards offered prayer, and the officers and

members of the Convention were then sworn; the oath provided for in the Edmunds-Tucker Law being administered to them by Justice George D. Pyper. The Convention—the freedom of which was extended to the Governor, Secretary, Utah Commission, United States judges, members of the bar, representatives of the press and prominent citizens generally—continued its labors until the 7th of July, when the Constitution framed by it was adopted. The following were among its provisions:

Section 3 (of Article I). There shall be no union of Church and State; nor shall any Church dominate the State.

Section 12 (of Article XV). Bigamy and polygamy being considered incompatible with a republican form of government, each of them is hereby forbidden and declared a misdemeanor. Any person who shall violate this section shall, on conviction thereof, be punished by a fine of not more than one thousand dollars, and by imprisonment for a term of not less than six months, nor more than three years, in the discretion of the court. This section shall be construed as operative without the aid of legislation, and the offenses prohibited by this section shall not be barred by any statute of limitation within three years after the commission of the offense; nor shall the power of pardon extend thereto until such pardon shall be approved by the President of the United States.

It was also provided that the latter section should not be amended until the proposed amendment had been submitted to Congress, approved and ratified by that body, and its action proclaimed by the President of the United States.

A committee, consisting of Messrs. John R. Winder, S. R. Thurman, James Sharp, Warren N. Dusenberry and L. W. Shurtliff waited upon the Utah Commission and requested them to provide means whereby, at the general election in August, the qualified electors of the Territory might vote upon the Constitution, prior to its presentation to Congress.

The Commission stated that while they were of the opinion that they had no express authority to take any official action on the proposition presented to them, yet in consideration of the fact that the proposed Constitution would contain prohibitions of polygamy and the union of Church and State, they were willing to recommend to the judges of election throughout the Territory that they receive all



*E. H. Woolley Jr.*



ballots cast by qualified voters for or against the Constitution, deposit them in separate boxes, and canvass and make return of the vote cast to such authority as the Convention might provide.\*

The election occurred on Monday, the 1st of August. The count of the votes cast showed the following result :

For the Constitution	-	-	-	13,195
Against the Constitution	-	-	-	502

The total vote at the same time for members of the Legislative Assembly was 16,640, of which the Liberals cast about 3,500. The chairman of the Utah Commission inferred that most of the ballots against the Constitution were cast by Mormons.

The Constitution, with a memorial asking for Utah's admission as a State, was presented to Congress in December.

Meantime, in midsummer of this year—1887—an event took place that moved all Mormondom to its center. It was the death of President John Taylor, who passed away on the evening of Monday, the 25th of July.

For nearly two-and-a-half years the Mormon leader had been separated from his family and friends, excepting a few who were his companions and attendants, the voluntary sharers of his exile. As previously stated, the life he led was more or less nomadic. It was not safe for him to abide at home, his residence—the Gardo House—being watched and raided continually by United States officers bent upon his capture. He therefore accepted, from time to time, the proffered hospitality of trusted friends, who felt honored in having him and his party beneath their roofs. They would remain in one neighborhood for several months, or weeks, or for only a few days, according to distance or proximity of danger. If they tarried for a season in some small village, inhabited exclusively by Latter-day Saints and persons whom they could trust, it was their custom to

\* Commissioner Thomas was in favor of denying the request *in toto*, on the ground that there was no authority in law for the holding of such an election; but he was outvoted by the other members of the Commission.

take all the people, even the little children, into their confidence, giving them to understand that the safety of their venerable leader depended upon their discretion. In no instance was this confidence betrayed. So well was the secret kept, that though squads of deputy marshals more than once passed through the village and approached the very house where the President was staying, they never suspected how near to them was the object of their search.

For obvious reasons, the exiles could take but little recreation, and most of this was after nightfall—when their peregrinations usually occurred—or on such days as they felt free from unfriendly observation. Quoits and croquet were favorite games with the President and his companions. It could not be but his health must suffer from his enforced retirement, ever changing conditions, and the anxiety preying upon his mind. Though wonderfully patient and composed, and even cheerful as a rule, it was evident that he was under a heavy strain, and that sooner or later his iron constitution would succumb.

His health began to fail about a year before his death, though his last illness did not commence until seven months later. Resisting the approach of death, he would not admit, even to himself, that he was seriously ill. The 10th of July, fifteen days before he expired, marked a crisis in his condition. It was the Sabbath, when the exiles were in the habit of holding private meetings and partaking of the Sacrament of the Lord's Supper. Upon that day the usual meeting convened, but no one spoke. All felt that the end was nigh, and a solemn shadow rested upon the little assembly. President Cannon lost no time in acquainting his fellow Apostles of the situation.

On the 18th of July, President Joseph F. Smith arrived from the Sandwich Islands, and as the all but glazing eyes of the dying leader rested upon him, and he realized that the members of the First Presidency were once more together—for the first time since December, 1884—he said, "I feel to thank the Lord." He continued to grow weaker, with only intervals of consciousness, until the evening

of the 25th, when, at five minutes to eight o'clock, he breathed his last. The place of his demise was the home of Thomas F. Rouche, Kaysville, Davis County. The event was duly announced to the public by his two counselors, in the columns of the *Deseret News*. The deceased was in his seventy-ninth year.

President Taylor's funeral took place at the Tabernacle, Salt Lake City, on Friday, the 29th of July.\* The services began about noon. They were conducted by Angus M. Cannon, President of the Salt Lake Stake of Zion. The speakers were Apostles Lorenzo Snow, Franklin D. Richards, Heber J. Grant, Counselor Daniel H. Wells, (who had lately returned from a presiding mission in Europe,) Elders A. O. Smoot, Lorenzo D. Young, Joseph B. Noble and Angus M. Cannon. The Tabernacle Choir furnished the music, and the opening and closing prayers were offered by Bishop Millen Atwood and Patriarch John Smith. The cortege formed in much the same order as at the funeral of President Brigham Young. The remains were conveyed to the City Cemetery, where the prayer dedicating the grave was offered by Elder Richard Ballantyne.

The death of President Taylor dissolved for the third time the First Presidency of the Church of Jesus Christ of Latter-day Saints, and left as its presiding council the Twelve Apostles, whose senior member, Wilford Woodruff, now became the virtual head of the Church. Not, however, until the reorganization of the First Presidency, in April, 1889, was he sustained as Prophet, Seer and Revelator; the position held successively by Joseph Smith, Brigham Young and John Taylor.

President Woodruff's first appearance in public, after the death of President Taylor, was at the General Conference of the Church in the fall of 1887. Accompanied by Apostles Lorenzo Snow and

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\* On the night of the 26th the casket containing the remains was brought from Kaysville and taken to the Gardo House, where, at six o'clock on the morning of the 29th the family and immediate friends assembled. The casket was then removed to the Tabernacle, where it lay in state for several hours, while upwards of twenty thousand people passed by and viewed the placid features of the dead.

Franklin D. Richards, he entered the Tabernacle just before service began on Sunday afternoon, the 9th of October. Recognized by the people, he was greeted with enthusiasm, nor would the applause subside until the snowy-haired veteran arose from his seat and waved salutation to the multitude. He was the opening speaker of the meeting. No attempt was made to arrest him, but he did not deem it prudent to remain long "off the underground," and after the conference he again went into retirement.

The day after the funeral of President Taylor, proceedings for the confiscation of Mormon Church property began, under the provisions of the Edmunds-Tucker Law. To this end, two suits were planted, at the instance of the United States Attorney General, in the Supreme Court of the Territory.

The title of the first suit was "The United States of America, plaintiff, vs. the late Corporation of the Church of Jesus Christ of Latter-day Saints, John Taylor, late Trustee-in-Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant and John W. Taylor, late assistant trustees, defendants." The purpose of this proceeding was to wind up the affairs of the aforesaid "late corporation," whose property, obtained or held in violation of section three of the Anti-polygamy Act of 1862—limiting the value of real estate to be acquired or held by churches in the territories to fifty thousand dollars—was to be forfeited and escheated to the Government and disposed of by the Secretary of the Interior for the use and benefit of the common schools of the Territory.

The title of the second suit ran: "The United States of America, plaintiff, vs. the Perpetual Emigrating Fund Company, Albert Carrington, F. D. Richards, F. M. Lyman, H. S. Eldredge, Joseph F. Smith, Angus M. Cannon, Moses Thatcher, John R. Winder, Henry Dinwoodey, Robert T. Burton, A. O. Smoot and H. B. Clawson, defendants." The object of this action was to carry into effect sections fifteen and sixteen of the Edmunds-Tucker Act,



dissolving the Perpetual Emigrating Fund Company and providing for the payment of its debts, the settlement of its affairs and the disposition of its remaining property in like manner and for the same purpose as in the other case.

The complaint, or bill in chancery, in the first or main suit, prayed that a decree be made forfeiting the charter and dissolving the corporation of the Church of Jesus Christ of Latter-day Saints, and that a Receiver be appointed to take charge of its assets—estimated at three millions of dollars—until disposition could be made thereof according to law. The other complaint was similar in form.

The prosecution was conducted by George S. Peters, Esq., United States District Attorney for Utah,\* assisted by Mr. William J. Clarke. Subsequently other counsel was employed to aid in prosecuting the great suit of the Federal Government vs. the Mormon Church. The defendant's attorneys at the outset of the proceedings were Franklin S. Richards and Le Grand Young. They also were reinforced.

Monday, the 17th of October, was the day set for hearing the arguments before the Supreme Court of the Territory. At ten o'clock that morning the court was duly opened, Justices Zane, Henderson and Boreman being present. The first business transacted was the admission to the bar of Colonel James O. Broadhead, of St. Louis, Hon. Joseph E. McDonald, of Indianapolis, and Henry W. Hobson, of Colorado. Messrs. Broadhead and McDonald, the latter an ex-Senator of the United States, were among the ablest and most distinguished lawyers in America. Their services had been secured by the defense in the Church suits. Mr. Hobson, who was United States District Attorney for Colorado, had been requested by the Attorney-General to assist Mr. Peters in the prosecution. Having taken the test oath, the three applicants were duly admitted to the bar of the Supreme Court of the Territory.

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\* Mr. Peters, who was from Ohio, had succeeded Mr. Dickson in this office: the latter having resigned in April, 1887, by request of the Attorney-General.

The defendants now withdrew certain answers and demurrers previously filed, and interposed new demurrers, the gist of which was as follows :

First—That the Supreme Court of Utah Territory had no jurisdiction over these defendants or the subject matter of these actions.

Second—That the acts of July 1st, 1862, and March 3rd, 1887, or so much thereof as attempted or pretended to dissolve these corporations, interfere with or limit their right to hold property, to escheat the same, or to wind up the affairs of said corporations, were unconstitutional and void.

Third—That the complaints did not state facts sufficient to constitute a cause of action.

Fourth—That the complaints did not contain any statement or matter of equity to entitle the plaintiff to any recovery from or relief against these defendants, or upon which the court could ground any decree or give to the plaintiff any relief.

When the case was called next morning, Colonel Broadhead arose and asked that the demurrer be argued in its order; that is, first, since it raised the question of the court's jurisdiction and the validity of the law under which the actions were brought.

Mr. Hobson opposed this request, insisting that the question of the appointment of a Receiver should be first considered. The demurrer presented issues that would be taken before the Supreme Court of the United States, and the consequent delay would suspend proceedings and prevent the appointment of a receiver.

Mr. McDonald seconded Colonel Broadhead's request. The defendants had a right to interpose a demurrer and to be heard upon it before other issues were introduced. No rights of the plaintiff would be impaired by allowing the property to remain in the hands of the defendants pending litigation. The legal ground for asking that a Receiver be appointed should be determined before the appointment was made.

The majority of the court took Mr. Hobson's view, and it was decided that the question of the appointment of a Receiver should be taken up first. The case then went over for another day, to enable the attorneys to consult and agree upon a statement of facts that would obviate the taking of testimony.

This statement, filed in court on the 19th of October, was as follows :

IN THE SUPREME COURT OF THE TERRITORY OF UTAH.

NO. . . . . OF . . . . . TERM

*In Equity.*

The United States of America, plaintiff,

vs.

The late corporation of the Church of Jesus Christ of Latter-day Saints, and John Taylor, late Trustree-in-Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant and John W. Taylor, late assistant Trustees-in-Trust of said corporation, defendants. Stipulation of facts on motion for the appointment of a Receiver.

For the purposes of this motion for the appointment of a Receiver in the above entitled cause, and for no other purpose, it is agreed that the following facts exist:

The act of Congress of 1887, entitled "An act to amend an act entitled 'An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes, approved March twenty-second, eighteen hundred and eighty-two,'" was received by the President of the United States on the 19th day of February, 1887, and was not approved by him, nor returned to the house in which it originated with his objections.

John Taylor was Trustee-in-Trust for the defendant, the Church of Jesus Christ of Latter-day Saints, when such act took effect, and he claimed to be and continued to exercise the powers of such Trustee-in-Trust until his death, on the 25th day of July, 1887. No successor to said John Taylor, as Trustee-in-Trust, has been elected or appointed for said Church of Jesus Christ of Latter-day Saints, but Wilford Woodruff is now President of said Church.

The defendants, Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor were never assistant Trustees of the corporation of the Church of Jesus Christ of Latter-day Saints, never having been elected, appointed or qualified as such, and no such assistant Trustees as provided for by the act of incorporation were ever elected or appointed for the said John Taylor. But the said last named defendants, and each of them, were the counselors and advisors of said John Taylor, and advised with him regarding the religious and charitable works and affairs of said Church, and regarding the management, use and control of the property belonging to the said Church.

When said Act took effect, the defendant, the Church of Jesus Christ of Latter-day Saints, by and through certain trustees, held and owned three certain pieces, tracts or parcels of real estate described as follows, to-wit :

All of block eighty-seven (87) in Plat A, Salt Lake City Survey, in Salt Lake County, Utah Territory, known as the Temple Block, and containing ten acres of land.

That tract of land commencing four (4) rods north of the southwest corner of lot

four (4) block eighty-eight (88) Plat A. Salt Lake City Survey; thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and a half ( $22\frac{1}{2}$ ) rods; thence west fourteen (14) rods; thence south three and one half ( $3\frac{1}{2}$ ) rods; thence west six (6) rods to the place of beginning, containing two and 157-160 acres, known as the Titling House and grounds.

All of that portion of lot six (6) in block seventy-five (75), Plat A, Salt Lake City Survey, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods; thence west eighteen (18) rods; thence north ten (10) rods; thence east eighteen (18) rods to the place of beginning, known as the Gardo House and grounds, and the Historian Office and grounds. All of the above real estate is situated in the townsite entry of Salt Lake City and the said land was patented by the United States to the mayor of said city on the 1st day of June, A. D. 1872.

The defendant, the said Church of Jesus Christ of Latter-day Saints, had occupied and claimed to possess the first of above named tracts or parcels of real estate prior to the 1st day of July, 1862, which said premises are described as follows:

All of block eighty-seven (87) in Plat A, Salt Lake City Survey, in Salt Lake County, Utah Territory.

That the second tract of land above described as the Titling House and grounds was occupied and used by said Church of Jesus Christ of Latter-day Saints as a Titling House prior to 1862. That the patent to said land having been issued as aforesaid, a deed therefor was executed to Brigham Young in his individual name. That he held the title in his individual name until his death, and after his death the Church authorities claimed said tract as property held in trust for said Church, and that in pursuance of said claim the executors of Brigham Young conveyed said property to John Taylor, Trustee-in-Trust of said Church. Brigham Young, at the time said conveyance was made to him, was Trustee-in-Trust for said Church.

The said defendant, the Church of Jesus Christ of Latter-day Saints, has acquired since July 1, 1862, to-wit: In July, 1878, the tract of real estate described as follows:

All the east half of lot six (6) in block seventy-five (75) Plat A, Salt Lake City Survey, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods; thence west eighteen (18) rods; thence north ten (10) rods; thence east eighteen (18) rods to the place of beginning.

The piece of real estate first above described, to-wit: All of block eighty-seven (87) in Plat A, Salt Lake City Survey, had been, prior to 1862, occupied by said Church of Jesus Christ of Latter-day Saints and set apart for Church purposes. And upon the same, prior to 1862, had been built a building known as the Tabernacle, and since 1862 has been built a building known as the Assembly Hall and there has been partially built a structure known as the Temple, which was commenced prior to 1862. Upon the northwest corner of said tract is the building known as the Endowment House. The Tabernacle and Assembly Hall are on the west half of said tract and the Temple structure is on the east half of said tract. The entire tract is enclosed by a stone wall and no part thereof has been used for any other purposes.

The piece of property known as the Gardo House was, after its acquisition and up to the time of the death of John Taylor, occupied by him as President of said Church, as



*Edwin Stratford*



his residence. And upon its acquisition a general Conference of said Church of Jesus Christ of Latter-day Saints designated said Gardo House as the residence of the President of the Church, and it has been since so considered.

Claiming to act under the requirements of the 26th section of the act of Congress referred to in plaintiff's bill of complaint as having been passed February 19, 1887, application was made to the Probate Court in and for the County of Salt Lake, Utah Territory, for the appointment of three trustees to take the title to, and to have and to hold the said three tracts or parcels of real estate hereinbefore described, and the said court did, claiming to act pursuant to said section of said act of Congress, on the 19th day of May, 1887, appoint Wm. B. Preston, Robert T. Burton and John R. Winder, trustees to take title and to have and to hold the said three tracts or parcels of real estate hereinbefore described: and afterwards deeds were executed purporting to convey and transfer the said three tracts of real estate to the said Preston, Burton and Winder, claiming to be Trustees by virtue of the proceedings aforesaid, and said tracts of land are now claimed to be held by said Preston, Burton and Winder, claiming to be trustees for said Church as aforesaid.

On the 28th of February, 1887, John Taylor, who was then Trustee-in-Trust for the Church of Jesus Christ of Latter-day Saints, held in trust certain personal property, goods and chattels, of the aggregate value of \$268,982.39½, which it is claimed by the defendants and denied by the plaintiff, had heretofore been contributed by the individual members of said Church for the purpose of building temples, and for other charitable and religious purposes. On said last named date the said John Taylor, as Trustee-in-Trust, executed an instrument in writing, a copy of which is hereto attached and made part hereof, marked Exhibit A.

That in pursuance of the provisions of the instrument aforesaid, certain property of the value approximately as set out below was delivered to the following named ecclesiastical church corporations created and existed under the laws of the Territory of Utah :

To the Church Association of Cache Stake of Zion	-	\$45,036.08
To the Church Association of Box Elder Stake of Zion	-	16,745.18
To the Church Association of Weber Stake of Zion	-	11,480.06
To the Church Association of Morgan Stake of Zion	-	2,716.57
To the Church Association of Summit Stake of Zion	-	3,153.20
To the Church Association of Wasatch Stake of Zion	-	6,044.90
To the Church Association of Salt Lake Stake of Zion	-	32,702.70
To the Church Association of Tooele Stake of Zion	-	4,591.10½
To the Church Association of Juab Stake of Zion	-	3,049.03
To the Church Association of Utah Stake of Zion	-	25,000.00
To the Church Association of Sanpete Stake of Zion	-	6,992.43
To the Church Association of Sevier Stake of Zion	-	15,445.50
To the Church Association of Millard Stake of Zion	-	14,083.80
To the Church Association of Beaver Stake of Zion	-	6,980.36
To the Church Association of Panguitch Stake of Zion	-	8,137.30
To the Church Association of St. George Stake of Zion	-	28,638.41
To the Church Association of Kanab Stake of Zion	-	38,185.77
Total	-	<u>\$268,982.39½</u>

The members of the said Stake corporations are members of the Church of Jesus Christ of Latter-day Saints, and it is claimed by defendants and denied by plaintiffs that they were substantially the original donors of said property in their respective Stakes.

The Church of Jesus Christ of Latter-day Saints was a corporation for the purposes set out in the act incorporating said Church at the time the act of Congress of 1887, heretofore set out, took effect and has claimed to exist as a corporation ever since that time.

The Tithing House and grounds as heretofore set out are not and never have been used as a place of worship or parsonage connected therewith, or as burial ground, nor are they appurtenant to any thereof.

The portion of the third tract of land set out in the first part of this agreement, as the Gardo House and grounds and the Historian's Office and grounds comprise a tract about eighteen by ten rods. The building thereon is a three story adobe building about thirty-five by forty-five feet. The grounds of the Gardo House and the grounds of the Historian's Office are separated by a terrace and for a part of the way by an evergreen hedge.

The Historian's Office and tract has been used as the office and residence of the Historian of said Church and as a depository for the records of said Church and for library purposes, and has been so used since prior to 1862.

For the purposes of this motion the probable value of the real estate herein described, is estimated as follows:

1. The Temple and Tabernacle block, one hundred and fifty thousand dollars.
2. The Tithing House and grounds, twenty-five thousand dollars.
3. The portion of tract three known as the Gardo House and grounds, fifty thousand dollars.
4. The portion of tract three known as the Historian's Office and grounds, ten thousand dollars.

The proceedings and resolution hereto attached and made part hereof, marked Exhibit B, were held and passed at a general Conference of the Church of Jesus Christ of Latter-day Saints, which was in session April 8, 1887.

The exhibit hereto attached as a part hereof, marked Exhibit C, shows the action of the Church authorities in nominating trustees as provided for by said general Conference, as set out in Exhibit B.

Nothing admitted or set out in this agreement shall in anywise bind a Receiver in case one be appointed by the Court, upon the motion pending, nor shall his powers be in anywise limited or abridged by anything herein set out.

The motion for Receiver now pending, and the hearing hereon, shall be determined upon this agreement of facts alone, neither party offering any evidence.

GEORGE S. PETERS,

United States Attorney.

JAMES O. BROADHEAD,

JOS. E. McDONALD,

FRANKLIN S. RICHARDS,

LEGRAND YOUNG,

Attorneys and Counsel for Defendants.

Dated October 19, 1887.



The motion for the appointment of a Receiver was then argued, Assistant U. S. Attorney Clarke being the opening speaker. He stated that the Territorial Supreme Court had been vested by Congress with equity powers for the trial of this suit. Congress in the exercise of its sovereign authority over the Territories had disincorporated the Mormon Church, and there being no one legally entitled to the possession of its property, the Government asked that a Receiver be appointed to take possession of it until final disposition was made. Congress, in the act organizing the Territory, had provided for the disapproval of any act of the Legislature, and this provision reserved the right to annul at any time any act of that body and dissolve any corporation organized thereunder. Mr. Clarke claimed that the distribution of the property to the various Stakes, as set forth in the statement that had been read, was a misapplication of the funds, designed to prevent the Government from securing possession of the property. For these and other reasons it was asked that a Receiver be appointed.

Thursday, October 20th, Colonel Broadhead addressed the Court, delivering a masterly argument, pronounced unanswerable by Gentiles as well as Mormons. The legal fraternity were enthusiastic in their encomiums. Ex-U. S. Attorney Dickson expressed the opinion that it would throw the cases out of court.

The following synopsis will give some idea of the line of argument pursued by Colonel Broadhead :

The proceeding for the appointment of a Receiver, under the facts shown in this case, was an extraordinary one. Such a remedy should only be adopted when it was shown that the property was liable to be wasted or destroyed, or that the defendant was insolvent or dishonest. In this case no such conditions existed. The only averments to be considered in the bill were to the effect that the trustees of the Church were unlawfully using its property; and that there was no one lawfully authorized to take care of the property, and in consequence it was subject to loss and destruction.

There was no way pointed out whereby the property was liable to be lost or destroyed. It was not shown that there was any fraud, or that the defendants were insolvent. Because the Government wanted to get the property was no reason why a Receiver should be appointed. It must show a condition of facts on which to base the request. There must be some tangible allegations made, supported by sufficient proof. Admitting

all the facts in the statement agreed on, there was no justification whatever for the appointment of a Receiver. The property was shown to be in safe hands, and the court was not authorized to remove it therefrom.

The Supreme Court of the Territory of Utah had been set apart specially by Congress to pass upon the laws enacted by that body. All courts should be outside of prejudice, and should be just; and no one could be just without being charitable. Courts have the power to override the legislature and the executive, in having the right to determine the validity of the law. The proposition made by counsel on the other side, that an incorporating act of the Legislature could be repealed by that body if the right to do so was reserved, would not be controverted by the defense, who realized that the proposition was correct. Nor would they oppose the doctrine that Congress had supreme power to legislate for the Territories. But if Congress granted a franchise, reserving no right to repeal or amend it, it could not exercise an unreserved power without violating the executed contract. Because the Government had reserved the right to disapprove the acts of the Legislature, was not to say that it had reserved the right to go any further. There was no provision in the charter of the Church, or in the Organic Act, reserving the right to alter, amend or repeal an incorporating act. The contract made with the Church was a valid one, and any violation of its provisions would be an impairment of the contract. No provision had been made changing the incorporating act; it was made conditional, and the Constitution forbade the impairment of the obligations of the contract thus entered into. (Numerous authorities were cited in support of these propositions.)

There could be found no authority for the claim that Congress had reserved the right to disapprove or repeal an incorporation act, unless that reservation had been specially designated. The reservation by Congress of the Organic Act was never intended to apply after thirty years, in the shape of an act of spoliation, unequaled in the history of the country, to take from the corporation the property it had rightfully acquired. The act instructing this court what steps it should take between the parties litigant was invalid. Congress had no right to make the act of July 1, 1862, limiting the Church property, when the Church held a contract to hold an unlimited amount; this act was a violation of the contract and was forbidden by the Constitution. That act recognized the validity of the act of the Legislature incorporating the Church; it had in fact approved of the act, except any provision that might have recognized polygamy; these it repealed, if any existed. The law of Congress also limited any future incorporating churches from acquiring more than \$50,000 worth of real estate; and provided for the punishment of polygamy. That was all that it did. Its language was "to annul all acts and laws which establish, maintain, protect or countenance the practice of polygamy, evasively called spiritual marriage." It had also declared, "That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned (the ordinance incorporating the Church), nor with the right to worship God according to conscience. This then protected the right to property, and the law limited any church from acquiring, *in future*, more than \$50,000 worth of real estate. Other property was not mentioned, yet the plaintiff is asking for other property. Congress had repealed certain provisions of the incorporating act, if they were there. It had by the action of selecting a portion of the act for disapproval ratified the remainder.

It had gone further still, and declared specially that the law of 1862 should not affect the remainder of the act incorporating the Church, all of which was included in the two provisions which the law was specially forbidden to interfere with. The act of 1862 was therefore an affirmance of the act incorporating the Church. But even without that affirmance, Congress had no right to dissolve the Church incorporation. That body had not been satisfied by approving the act, but had gone further and dissolved the incorporation, a power never before exercised or claimed in this or any other country. The legislative department of the Government had no right to do this, and deprive the affected parties of the right to have their claim adjudicated. Under such an act one claim of the original donor was lost forever. Congress claimed the right to take the Church property and distribute it to persons who had no right to it. This course had been characterized by the United States Supreme Court to be unjust, arbitrary and oppressive.

“That government can scarcely be deemed free where the property of the people is subjected to the unrestricted will of the legislature.” Congress had no right to deprive a person of property without due process of law. It had undertaken to do this in the passage of the Edmunds-Tucker law. The supreme law of the land had forbidden such a course. It gave to every one the right of a hearing before being deprived of life, liberty or property. “A mob may take a man and hang him, but that is not due process of law within the meaning of the Constitution. It is the right and power that is exercised by the grizzly bear in the mountains when it seizes its prey. That is the power, unjust and arbitrary, that is sought to be used by Congress in this case. The defendants now claim the protection of the Constitution, to stop this spoliation of their property by the oppressive and arbitrary act of Congress. If the judgment of this court be against us, we will invoke the judgment of the highest tribunal in the land.”

Mr. Hobson followed for the Government. He claimed that the Court was vested with the absolute right to administer on the Church property under the law of Congress. The property escheated was liable to be destroyed and the appointment of a Receiver to take charge of it was therefore proper and necessary. The Church's alleged “vested rights” were only “squatter's rights.” An act of incorporation was not a contract with the corporation acting under it. The act giving the Church its charter, having been disapproved, was void, and the Church had been an incorporation by proscription only. Mr. Hobson, in conclusion, had considerable to say about polygamy.

On the morning of October 21st, ex-Senator McDonald made the closing argument for the defense. He criticized the conduct of his “young friend Mr. Hobson,” for going outside the record and dragging in the subject of polygamy, evidently thinking thereby to

prejudice the Court. This tribunal should be above the imputation that it could be prejudiced. He then contended against the proposition that the power of Congress was absolute. The British Parliament could not legislate against natural or vested rights, nor could the United States Congress. The act incorporating the Mormon Church was a charter and it had become a vested right. A decree declaring a corporation dissolved was a judicial act, such as Congress, a legislative body, had no right to perform. Its decree of dissolution was therefore void. Regarding the real property of the Church, it had been shown that two pieces had been occupied long before 1862, while a third—the Gardo House, of which premises the Historian's Office and grounds were a part—was acquired since that time, but was exempted, as a parsonage, from the operations of the Edmunds-Tucker law. All this property was in the hands of trustees appointed under Section twenty-six of that law.\* As to the personal property distributed to the Stakes, that did not belong to the Church, but was held in trust. A Receiver could not be appointed to take into custody property held in trust. If the power was exercised as claimed in this case, there was no right of an American citizen that was not subject to invasion.

U. S. Attorney Peters was the final speaker. He considered the case a proceeding to administer upon the estate of a dissolved corporation. He did not think the question of the validity of the act blotting out the Church corporation could come up properly at this stage of the proceedings. He contended, however, that the Edmunds-Tucker Act was constitutional. The Church did not and could not have a vested right to the real estate in question, and as to the transfer of the personalty, that was a fraud. There was a disposition to scatter this property to the four winds. It made no difference

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\* On or about the 8th of April, 1887, the Temple Block, the Tithing House premises, the Gardo House and the Historian's Office and grounds had been deeded to three trustees, namely, William B. Preston, Robert T. Burton, and John R. Winder, nominated by the Church authorities and appointed by the Probate Court of Salt Lake County, pursuant to Section 26 of the Edmunds-Tucker law.

what the property was used for, to what class it belonged, or when it was acquired. It was the duty of the Court to appoint a Receiver to take charge of it pending litigation.

The Court's decision was delivered on the 5th of November. It was voiced by Chief Justice Zane and was a unanimous opinion. It sustained the position of counsel for the Government, and granted the motion for the appointment of a Receiver.

The person selected to fill this important office was United States Marshal Dyer, who received his appointment on the 7th of November. The selection, while agreeable to counsel on both sides, was exceedingly distasteful to Chief Justice Zane, who dissented from the action of the majority of the Court appointing the U. S. Marshal to this office.\* The bond of the Receiver, in the suit against the Church corporation, was fixed at two hundred and fifty thousand dollars; in the other suit, at fifty thousand dollars. The Court's decree, which was made formal on the day following the appointment of the Receiver, ordered that he proceed forthwith to collect and get in all the outstanding debts and monies due to, and personal property of, the late Church corporation, and take possession of, manage, control and collect the rents, issues and profits from the real estate thereof. The defendants were ordered to deliver up to the Receiver all the assets, property and effects of every description belonging to the said corporation. The Receiver was given power to commence suits without the special permission of the Court.

It was now ordered that William B. Preston, Robert T. Burton and John R. Winder, the trustees appointed by the Probate Court to hold the property of the Church, be made parties to the suit. Sub-

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\* Said the New York *Sun* of November 17th: "This Receiver is no other person than the U. S. Marshal of the Territory. In other words the plaintiff is made Receiver. In a private suit such an appointment would be scandalous, incredible. For this appointment as Receiver of a representative of the plaintiff—and that officer of the Government, too, who as Marshal will have to serve all the processes that may be issued in order to get the property into his possession as Receiver—two of the Associate Justices of the Supreme Court of Utah are responsible. We understand that Chief Justice Zane dissented from the extraordinary appointment, although concurring in the order directing a Receiver.

sequently Theodore McKean, Angus M. Cannon, Francis Armstrong and Jesse W. Fox, who were found to hold property that had belonged to the Church, were added to the list of the defendants. The demurrers of the defense were submitted without argument, and overruled.

Receiver Dyer filed his bond of a quarter of a million with the clerk of the Supreme Court of the Territory, and took the oath of office on the afternoon of the 10th of November. His bondsmen were the following well known capitalists and business men: William S. McCornick, John E. Dooly, Boyd Park, Louis Martin, John J. Daly, Horace S. Eldredge, John Sharp, Andrew Brixen, Matthew Cullen, Jacob Moritz, Charles Read, J. C. Glanfield and William L. Pickard.

Next day the Receiver sallied forth to make seizures of property pursuant to the order of the Court. The first piece taken possession of was the Tithing Office, which was turned over, on demand, by Bishop John R. Winder, after consultation with Attorney Le Grand Young. Bailiff William McCurdy was placed in charge of the premises, with the understanding that the usual business should continue without interruption until further notice.

The Gardo House and the Historian's Office were next taken, and a demand was made at the President's Office for all the books, records and papers belonging to the Church. To this, Attorney Young objected, insisting that the Court's order was not broad enough to cover such a demand. The Receiver's attorney, Mr. P. L. Williams, contended to the contrary. James Jack, chief clerk of the office, being absent from the city, this matter was temporarily postponed. Mr. Young also protested against the seizure of the Gardo House. The Receiver insisted upon taking it, however, but allowed the janitor, Mr. Samuel J. Sudbury, to remain in temporary charge.

Not content with seizing the Church parsonage, the Receiver made a demand for the Temple Block, property used "exclusively for purposes of religious worship," thus fulfilling Delegate Caine's prediction to Senator Hoar while the confiscating act was pending in Congress.

Arrangements were made whereby the use of the Tithing Office and the Historian's Office were retained by their respective occupants upon the payment to the Receiver, of a yearly rental of twenty-four hundred dollars. The Gardo House was also rented by the Church, at one time as much as four hundred and fifty dollars per month being paid; and it was occupied by the presiding authorities pending further proceedings. A nominal rental was also required for the Temple Block.

On the 17th of November, Receiver Dyer, filed his bond of fifty thousand dollars, and on the 18th proceeded to take possession of the property of the Perpetual Emigrating Fund Company. This consisted of a safe, a desk, records, account books, promissory notes, papers of various kinds and a few defaced silver coins. The company's statement on November 10th showed its affairs to stand as follows:

Assets in notes and accounts	-	-	\$585,832.84
Liabilities	-	-	167,874.34
Net Assets	-	-	<u>847,958.50</u>

Most of this property was in the promissory notes previously mentioned, uncollectable and of no value whatever.

On November 19th the appraisement of personal property in and about the Church buildings took place. The appraisers on the part of the Receiver were I. M. Barratt, George Cullen and Mark McKimmins; those on the part of the Church trustees, Henry Dinwoodey, Amos Howe and E. G. Woolley. Messrs. Dinwoodey and Barratt, furniture dealers, took a complete list of all the desks, tables, chairs, carpets, paintings and furnishings of every description, affixing a valuation thereon; Messrs. Woolley and McKimmins performed a like office in respect to cattle, horses, wagons, etc., and Messrs. Howe and Cullen listed and appraised the machinery found on the premises, including the hoisting engine, derricks, windlass, ropes, etc., used in the construction of the Salt Lake Temple. About the same time the stock on the Church Farm was appraised, Messrs. Francis Armstrong and James M. Kennelly executing the task for the trustees and the Receiver.

On November 23rd, Receiver Dyer, his attorney Mr. Williams, and Deputy Marshal Arthur Pratt called at the President's Office and made a specific and peremptory demand for all the records, account books, notes, stocks, money, etc., belonging to the Church. The chief clerk was still absent, but Mr. David McKenzie, one of the book-keepers, informed the Receiver that he had no charge or possession of any property except the President's Office account books since March 1, 1887. Williams wanted these, but McKenzie declined to deliver them, remarking that they did not belong to the Church corporation. Williams insisted that it was all the same and said: "We want all the books since 1862." Again Mr. McKenzie denied all knowledge of any books excepting those in his possession, and these he refused to surrender.

At this juncture Attorney Le Grand Young entered the office, and a spirited dialogue took place between him and Mr. Williams; the former claiming that the Court's order was being misapplied, and warning the latter that if he seized property not belonging to the Church corporation he would do it at his peril. Mr. Williams reiterated his demand for the books, including those kept since March 1, 1887, and expressed the opinion that the Court was being trifled with, and that Mr. Jack's absence was designed. He insisted that the books be delivered, or that the custodians state that they refused to obey the Court's order. Mr. Young denied that Mr. Jack was avoiding legal process. He was in California, upon a visit contemplated months before the order was made. He would be communicated with and would doubtless return at once. A little patience should be exhibited. Mr. Young stated that he and his friends would not resist the Court's decree, but they wanted to be heard upon the question. Meantime they would not surrender the books or other property that did not belong to the Church corporation, and if these were seized it would be under their protest. The Receiver and his friends then withdrew.

The sequel of this visit was the seizure of the President's Office, which occurred about half-past four o'clock in the afternoon





Amos Howes



of the same day, the Receiver and his party, with U. S. Attorney Peters, returning at that time and taking possession of the premises. The clerks were all dismissed, and two deputy marshals put in charge of the place. Messrs. McKenzie and Rossiter, representing respectively the Salt Lake City Railroad and the Brigham Young estate, were permitted to temporarily occupy their desks, but all other business was suspended.

Other seizures followed, the Receiver and his agents gathering in Church property wherever it could be found.

On the 7th of December the books of the President's Office were carried off by the Receiver: Mr. Jack, the chief clerk, who had returned from California, having declined to surrender them or agree to produce them in court when wanted. His position was that the books did not belong to the Church corporation and that the Receiver had no right to them. Only a few books of minor importance were left in the office, Mr. Jack being required to give a receipt for them as agent of the Receiver.

With the close of the year, owing to these proceedings, the laborers upon the Salt Lake Temple were discharged and all work upon that edifice ceased.

An effort was now made to secure an appeal to the Supreme Court of the United States from the decision appointing a Receiver. Counsel for the Government contended that the order appointing the Receiver was not final but interlocutory, and therefore not appealable. The Supreme Court of the Territory ruled upon this point on the 18th of January, 1888, denying the application for an appeal, on the ground taken by the prosecution. The defense then asked that the main issue be set for trial at an early day. U. S. Attorney Peters objected, and his request for further delay was granted.

Meantime the Court had appointed an examiner in the person of its clerk—E. T. Sprague—to take testimony in the case. Proceedings before that official began on the 10th of February and continued at intervals for several months. The first witness called was James Jack, chief clerk of the President's Office. He was asked to state

where President John Taylor was at a certain time in 1887, but declined to answer, whereupon Mr. Peters asked that he be adjudged in contempt. The Examiner refused to pass upon the question, and it was about to be referred to the Court, when Mr. Jack consented to reply. Efforts were also made to ascertain the whereabouts of certain books, papers and notes. Mr. Jack stated that they were deposited in a place designated by President Taylor, since which he had no knowledge of them.

Angus M. Cannon and others were rigidly questioned regarding certain property received by the Salt Lake Stake corporation from the Trustee-in-Trust. In the course of his examination Elder Cannon stated that plural marriages were no longer solemnized in the Temples of the Latter-day Saints, and that such marriages had been discontinued.

Moroni M. Sheets, another witness, was imprisoned by order of Justices Henderson and Boreman, for refusing to answer certain questions relating to his employer, (Bishop Preston) his occupation, and certain property on the Jordan Stock Farm. Sent to the Penitentiary on the 2nd of April, Mr. Sheets was kept there until the 2nd of May, when he answered the questions and was released from custody.

Proceedings before the Examiner continued from day to day, until the testimony taken was quite voluminous. The most persistent efforts were made to ascertain the whereabouts and condition of property which the late Trustee-in-Trust was accused of "fraudulently transferring," in order to thwart proceedings in confiscation.

Included in this property was a portion deeded to the Church Association of the Salt Lake Stake of Zion, which organization had subsequently transferred it to the Presiding Bishopric of the Church to be used upon the Salt Lake Temple. The Receiver applied for an order turning over to him this property (valued at twelve thousand dollars), and a hearing was had before the Court. Messrs. Peters and Williams represented the Receiver, and Ben Sheeks the Presiding Bishopric and the Church. The Stake Association was not repre-

sented, its claim being ignored by the Receiver and his attorneys. They contended that the transfer to the Stake was void, because not made prior to March 3, 1887, but even if legal it had been supplemented by another transfer to Bishop Preston, as an officer of the Church corporation; hence the property was liable to the claim of the Receiver. Against this it was maintained that the transfer from the Church to the Stake was valid, as it took place on February 28, 1887, several days before the Edmunds-Tucker bill became law, and that the transfer to Bishop Preston, on March 12, 1887, was not to him as an officer of the Church corporation, but as a representative of the Church as an ecclesiastical organization.

On May 2nd, a decision by a majority of the Court—Judges Henderson and Boreman—turned over to the Receiver the property in question. Judge Zane dissented for the reason that the property was claimed by the Salt Lake Stake Association, which had not been made a party to the suit; and to assume that it had no rights in the premises and decide the question without giving that claimant a hearing, was, in the opinion of the Chief Justice, a seizure of property without due process of law.

In order to stop litigation over minor issues—which threatened to be interminable—and expedite the settlement of the main question, an agreement was now entered into that all small suits begun should be dismissed and the properties in dispute turned over to the Receiver, pending final adjudication.\* An order confirming this arrangement was made by the Court on the 9th of July. It was ordered that the Examiner be paid out of the Church funds in the hands of the Receiver.

The value of the property now held by that official, exclusive of

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\* The defendants in these small suits were Angus M. Cannon, Horace S. Eldredge, John C. Cutler, the Salt Lake Literary and Scientific Association et al., Francis Armstrong and the Salt Lake City Railway Company. John C. Cutler and the Provo Manufacturing Company, Zion's Co-operative Mercantile Association, Z. C. M. I. and the Provo Manufacturing Company; all of whom were charged with holding property belonging to the late Church corporation. The aggregate amount involved was \$157,666.15.

the Temple Block, upon which no valuation was placed, was figured on the 11th of July as follows:

Aggregate amount of values settled by order of the	
Supreme Court, Monday, July 9th, 1888	\$157,666.15
Church Farm	150,000.00
Coal Interests	100,000.00
Thirty Thousand Sheep	60,000.00
Notes for Theater Stock, signed by John Sharp and	
Feranorz Little, James Jack, Le Grand Young and	
H. B. Clawson	
	27,000.00
Deseret Telegraph Stock	22,000.00
Personal Property (cattle, etc.)	75,000.00
Gas Stock	75,000.00
Tithing Yard	50,000.00
Gardo House	50,000.00
Historian's Office	20,000.00
Dividends on Gas Stock	4,000.00
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Total,	\$790,666.15

U. S. Attorney Peters and Receiver Dyer now set out for Washington to confer with leading Government officials and have the agreement for the temporary surrender of the Church property ratified by the Attorney-General.

The succeeding fall and winter witnessed strong efforts for and against Utah's admission into the Union, upon the anti-polygamy platform framed by the Constitutional Convention in July. The majority of the Utah Commission, in their report to the Secretary of the Interior, stated that they regarded this movement for Statehood as an effort to free the Mormon Church from the toils which the firm attitude of the Government and the energetic course of the Federal officers had thrown around it. "The Mormon leaders and their obedient followers" had "made no concessions" as to polygamy, and during the past year the names of sixty-seven men had been reported to the Commission as having entered into plural marriage. In conclusion they recommended further legislation upon the Mormon question.

Commissioners Carlton and McClermand refused to sign or sanc-

tion the report, and gave their reasons in a communication to the Secretary of the Interior. Said they: "Now, while the great mass of the Mormon people are making an effort for the abandonment of the practice of polygamy, we are asked to recommend further legislation of a hostile and aggressive character, almost, if not entirely, destructive of local self-government, thereby inflicting punishment on the innocent as well as the guilty. Our answer is, we cannot do so; we decline to advise Congress to inflict punishment by disfranchising any portion of the people of Utah on account of their religious or irreligious opinions."\*

December came, and the delegation appointed by the Constitutional Convention to present to Congress Utah's petition for Statehood, proceeded to Washington to discharge that important duty.†

The Constitution and memorial were placed in the hands of Mr. Ingalls, President *pro tempore* of the Senate, by Hon. F. S. Richards on the 17th of December.

Two days later the subject came before the Senate, and Mr. Call, of Florida, offering a resolution that the memorial be printed in the *Congressional Record*, moved its adoption. Mr. Edmunds objected, and a heated tilt took place between him and the gentleman from Florida; the debate being participated in by Mr. Paddock, ex-Utah Commissioner, now Senator from Nebraska, and others. Mr. Edmunds opposed the printing of the memorial on the ground of expense, and because it might contain "something disrespectful to

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\* Prior to making this "minority report," Messrs. Carlton and McClelland had addressed letters to several prominent Federal officials and other non-Mormons, residents of Salt Lake City, asking each for an expression of his views as to whether or not the existing laws against polygamy, diligently and strictly enforced, might be reasonably relied upon to work a cessation of the practice, without further legislation by Congress. Affirmative replies were received from Chief Justice Zane, Surveyor General Bowman and Hon. Hadley D. Johnson. The Chief Justice also stated, in answer to a question upon the subject, that no case "originating in the commission of the crime of polygamy since the date of the Edmunds-Tucker Act" had come under his judicial notice.

† Messrs. Franklin S. Richards, Edwin G. Woolley and William W. Riter had been chosen to act in conjunction with Delegate Caine in presenting the Constitution to Congress, and urging Utah's admission into the Union.

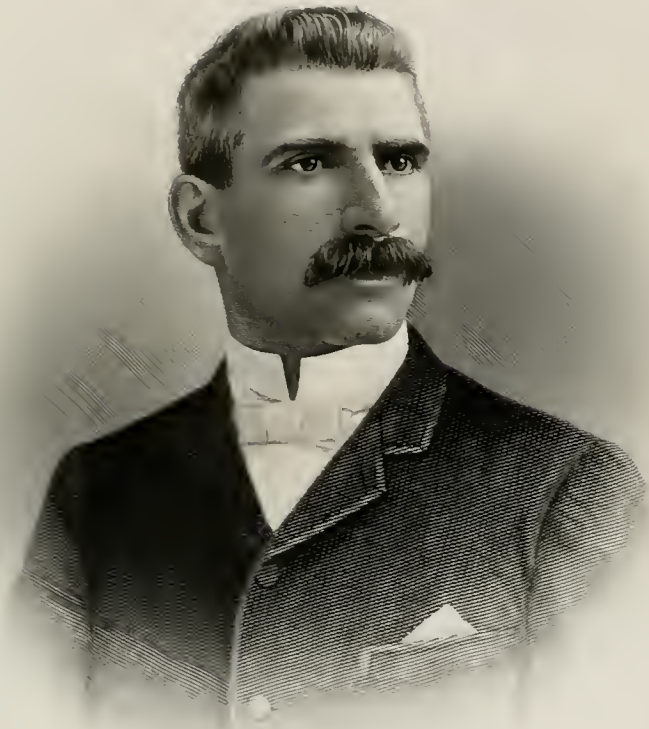
Congress." Mr. Call answered these objections by reading the memorial, which was brief and respectful, and having thus gained his point by insuring the publication of the document in the *Record* as a part of his speech, he withdrew his resolution.

Bills for Utah's admission were now introduced; one in the House of Representatives by Delegate Caine on the 10th of January, 1888, and one in the Senate by Mr. Butler, about the same time. They were referred to the appropriate committees.

The Senate committee on Territories heard arguments for and against Statehood for Utah on the 18th of February and the 10th of March; Hon. F. S. Richards, Hon. Joseph E. McDonald, Delegate Caine and Judge Jeremiah M. Wilson urging favorable action by Congress, and Delegate Dubois, Senator Paddock and others opposing them. The main argument of the opponents of Statehood was that the Mormons were not sincere; and that the anti-polygamy clauses in the proposed Constitution were a mere ruse and rope of sand.

On March 26th Senator Cullom reported, from the committee, resolutions—which became the sense of the Senate—that Utah ought not to be admitted as a State until it was certain that polygamy had been entirely abandoned by her people, and that the civil affairs of the Territory were not controlled by the Priesthood of the Mormon Church. So ended the matter in the Senate. A year later the same question was agitated before the House committee on Territories.





*Frederic J. Moore*



## CHAPTER XXIII.

1887-1888.

THE BITTERNESS OF THE CRUSADE ABATING—THE SALT LAKE CHAMBER OF COMMERCE—FIVE LIBERALS IN THE LEGISLATURE—A FUSION TICKET PROPOSED FOR THE SALT LAKE CITY ELECTION—A DIVISION AMONG THE LIBERALS—GOVERNOR WEST AND THE ANTI-FUSIONISTS—FOUR LIBERALS IN THE CITY COUNCIL—APPROACH OF "THE BOOM"—REAL ESTATE SPECULATORS SEIZE ARSENAL HILL AND THE TENTH WARD SQUARE—THE LAND JUMPERS EJECTED BY THE POLICE AND DEFEATED IN THE FEDERAL COURTS—GIFTS OF REALTY FROM THE CITY TO THE TERRITORY—THE EXPOSITION CAR.

THE extreme bitterness of the crusade was now beginning to abate. Not that the prosecution of polygamy had ceased, or appeared likely to cease. The Government and its representatives were as determined as ever to press the issue and force from the Mormon Church a concession as to the prohibited practice. At the same time there was an evident purpose to enforce the anti-polygamy laws humanely, and avoid everything savoring of persecution. This spirit was plainly manifested by President Cleveland and by most of those whom he appointed to office in this Territory.

Nevertheless, there were many Gentiles who still favored "heroic treatment" as the speediest and most effective means of accomplishing the end sought. These continued to work for the enactment of more stringent congressional legislation.

Some of the Gentiles—and the issue showed them to be a very influential class—deprecated any measures more rigorous than those in operation. Anxious for the suppression of polygamy and the dissolution of what they termed the union of Church and State, they did not wish to see Utah under the iron heel of a legislative commission, which meant the disfranchisement of the entire Mormon community.

Thus was the Gentile sentiment divided, and to this division Utah owes more, perhaps, than will ever appear. Had there been no kind and generous spirits to hold in check the fiery fanatics who seemed bent on ruining if they could not rule the Territory, the history of those times might have been vastly different. We do not include all the Anti-Mormons in the "rule or ruin" category. There were noble and generous spirits among them also, but they differed in judgment with the conservatives, as they differed in spirit and motive with some of their radical associates.

One of the elements through which Providence worked, at this critical period, to accomplish its own purpose with reference to the future of the commonwealth, was the Gentile business men of Salt Lake City. Most of these had lived for many years in the Rocky Mountain region; had reared families and made fortunes in Utah; and now owned valuable properties and conducted various branches of business within her borders. These men, while in sympathy with the higher objects of their party, were not out-and-out haters of the Mormon people, with whom they did the greater part of their business, and would fain have been on terms of peace and amity. They were weary of the incessant agitation that strained to the utmost their social and business relations, disturbing values, prostrating trade, frightening away capital and population, and threatening to wreck the commonwealth.

It was such feelings among such men that led to the formation, in April, 1887, of the Salt Lake Chamber of Commerce. One of the pioneers of the movement was Governor Caleb W. West, who put himself in accord with a number of gentlemen of conservative policy, and with them formed the design to organize the business men of Salt Lake City into an association of the above name and character; the purpose of which was to revive commerce, establish home industries, attract capital and population, and by such means, in lieu of the enslavement of the Mormons, bring about the social and political changes so much desired by the Gentiles.

While this was undoubtedly one of the aims of the pioneer



Yours truly  
Thomas R. Cutler



promoters of the Chamber of Commerce, they were careful not to "wear it upon their sleeves for daws to peck at." They must have the Mormon as well as the Gentile business men in their enterprise, or they could not make it successful; and so, taking as their motto, "No politics or religion in the Chamber," they sought to exclude, and did exclude as far as possible, "all ideas of creed and purposes of political faction."

In pursuance of this design, a meeting of Mormon and non-Mormon business men—the latter greatly predominating—was held at the Federal court room in the Wasatch Block, on the evening of Saturday, the 2nd of April. The meeting was called to order by Mr. Fred J. Meyers, who nominated Governor West for chairman. He was unanimously chosen.

Governor West explained the object of the meeting and briefly addressed those assembled, after which Hugh C. Wallace was elected secretary of the meeting and Messrs. W. H. Culmer and Fred Simon assistant secretaries. Speeches were made by C. W. Bennett and W. M. Ferry, and then, on motion of Henry W. Lawrence, it was resolved that a Chamber of Commerce and Board of Trade be formed for Salt Lake City.

On motion of Mr. McIntosh the chair was authorized to appoint a committee of fifteen, of which the president of the meeting should be *ex officio* chairman, to draft a constitution, by-laws, and plan of organization and to report at an adjourned meeting. Accordingly, the chair appointed the following committee of organization: J. C. Conklin, J. R. Walker, W. E. Smedley, W. H. Remington, P. P. Shelby, R. McIntosh, W. H. Bancroft, H. W. Lawrence, C. S. Burton, F. W. Jennings, W. H. Rowe, S. P. Teasdel, F. H. Auerbach, and H. L. A. Culmer.

At a subsequent meeting the report presented by this committee was adopted, and the following officers were elected:

President—W. S. McCornick.

1st Vice President—S. P. Teasdel.

2nd Vice President—F. W. Jennings.

Secretary—Hugh C. Wallace.

Treasurer—T. R. Jones.

Directors.—W. H. Remington, W. S. McCornick, S. P. Teasdel, F. W. Jennings, James Glendinning, J. C. Conklin, Fred H. Auerbach, H. L. A. Culmer, M. H. Walker, A. Hanauer, Geo. A. Lowe.\*

The Chamber of Commerce was formally opened on Friday, May 20, 1887. At this meeting the secretary reported that one hundred and eighty-four out of the two hundred seats of membership were taken and that one hundred and five had paid their initiation fees.

Soon after the organization of the Chamber, there was issued under its auspices an official organ bearing the name of the *Salt Lake Journal of Commerce*. The first number greeted the public accompanied with the following official note to the editor:

SALT LAKE CHAMBER OF COMMERCE.

SALT LAKE CITY, June 6th, 1887.

H. L. A. Culmer, Esq., City.

DEAR SIR:—You are hereby advised that at a meeting of the Board of Directors, held June 4th, you were authorized to claim the *Journal* to be the official organ of the Chamber, published under its authority, and can expect the support and influence of our organization.

Very Respectfully,

W. S. McCORNICK, President.

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\* The signers of the articles of incorporation were: Caleb W. West, W. S. McCornick, R. McIntosh, B. J. Raybould, C. W. Tarsons, T. R. Jones, W. H. Remington, J. R. Walker, J. C. Conklin, J. E. Bamberger, M. H. Lipman, W. H. Culmer, J. B. Walden, H. G. McMillan, Jacob Moritz, Fred Simon, H. L. A. Culmer, Eli H. Murray, Sam Levy, Frank W. Jennings, Emanuel Kahn, James Glendinning, Henry Siegel, Joseph Baumgarten, Lewis B. Rogers, Augustus Podlech, Herrman Hill, Ben F. Whittemore, C. W. Bennett, R. N. Baskin, W. E. Smedley, Bolivar Roberts, R. H. Terhune, Geo. Osmond, W. C. Pavey, Wm. Sloan, John Heil, T. C. Armstrong, Jun., Louis Hyams, Heesch & Ellerbeck, C. F. Annett, O. J. Hollister, G. S. Erb, J. T. Little, Wm. C. Hall, A. J. Gunnell, A. Harrison, G. F. Culmer, P. H. Lannan, Hugh Anderson, Charles Read, H. C. Wallace, John T. Lynch, Matthew Cullen, P. L. Williams, Edward Swann, Alfred Thompson, R. Kletting, James Hogle, W. P. Noble, C. R. Barratt, J. E. Dooly, Fred H. Auerbach, Henry W. Lawrence, F. H. Meyers, R. C. Chambers, M. H. Walker, Howard Sebree, P. P. Shelby, Allen Fowler, Lewis P. Kelsey.





*O. J. Salisbury*



The *Salt Lake Journal of Commerce* soon obtained a wide circulation in the Eastern and Western States. Of the institution that it represented one of the leading Eastern journals said: "The Salt Lake Chamber of Commerce is the most enterprising body of its kind in the West."

It would be idle to claim that all who connected themselves with the Chamber of Commerce at its incipiency were actuated by motives of friendship for the Mormon people; that it was purely from charity and philanthropy that they enrolled their names as members of this commercial organization. The enhancement of their material interests and the triumph of the Liberal party, by an influx of outside capital and an increase of Gentile population, were the main ends sought by many. General Connor, "the father of the Liberal party," had dreamed of such a consummation early in the sixties. It was now late in the eighties and his dream seemed quite possible of realization.

Doubtless some such thought was in the minds of most of the Gentile members of the Chamber of Commerce, even those who entertained friendly feelings for the Mormons, and were styled "Jack-Mormons" by their associates. Setting their faces like flint against the schemes for Mormon disfranchisement, they nevertheless believed the triumph of Liberalism to be a necessary step toward the inauguration of a better condition of things—the ushering in of an era in which old animosities would be forgotten, old political lines wiped out and new ones drawn not running parallel with former prejudices and predilections, and Mormons and Gentiles, affiliating as Democrats or as Republicans, a happy and prosperous people crowned with sovereign Statehood, be found shoulder to shoulder pressing up the hill of progress to the summit of a glorious destiny.

It was because the Chamber of Commerce promised success to the Liberal cause that some of the most radical of the Anti-Mormons identified themselves with it, and it was because that promise was not immediately fulfilled, or not fulfilled in the way they desired, that they soon withdrew, refusing to lend it further support.

It was probably the suspicion that the promotion of Liberalism was the main object with the majority in the Chamber, that caused the bulk of the Mormon business men at first to stand aloof from the organization. Liberal control of the Territory, or any considerable portion thereof, was a thing much dreaded by those who remembered the experience of Tooele County. Hence the reluctance of many to join heart and soul in the new movement. It is a fact, however, that as soon as it became apparent that politics and religion were actually excluded from the Chamber, whatever the aims and outside efforts of its members, Mormon merchants, bankers and business men flocked to its support, and were soon numbered among its firmest and most substantial pillars. Among those who joined it at an early day were Superintendent Horace S. Eldredge, Assistant Superintendent Thomas G. Webber, Directors Heber J. Grant and Henry Dinwoodey, of Z. C. M. I.; Elias Morris, the veteran manufacturer; John W. Young and Francis Cope, two of the ablest and most energetic of Utah's railroad men. None labored for it more diligently than the faithful and tireless Frank Cope, whose untimely death in the third year of the Chamber's history was deplored by all classes of the community.

The pacific influence wielded by the Salt Lake Chamber of Commerce was manifested in the combined celebration, by Mormons and Gentiles, of Independence Day in 1887, and again in 1888, which, though not the first celebrations of the kind that Utah had witnessed, were none the less significant of the "change of heart" that was beginning to be felt. The Gentiles, however, were not prepared at that time to join with the Mormons in an effort to secure Statehood for the Territory.

The twenty-eighth session of the Legislature convened at Salt Lake City on Monday, January 9, 1888. Five Liberals, it will be remembered, had been elected to this Assembly. They were Thomas Marshall, John M. Young, E. D. Hoge, of Salt Lake City; D. C. McLaughlin of Park City, Summit County; and Clarence E. Allen, late of Bingham, Salt Lake County. Messrs. Marshall and Young



*Chas. Woodmansee*



were in the Council, and their three confreres in the House. With the exception of Mr. McLaughlin, the Park City representative, who had sat in the previous Legislature, these were the first Liberals ever numbered among the law-makers of Utah. Their election was mainly due to the operations of the anti-polygamy acts of 1882 and 1887, disfranchising Mormon voters, and causing a reapportionment of the Territory.

In joint session, on the 10th of January, the Legislative Assembly received Governor West's message, which was read to them by its author. The Mormon members listened with patience, the non-Mormons with satisfaction, to the oft-told tale of the "irrepressible conflict" between the Latter-day Saints and the people of Ohio, Missouri, Illinois, and finally the Gentiles of Utah: to charges of mistreatment of Federal officials by Mormons; to the usual arraignment of priestly rule and polygamy, with references to the antagonism existing between certain local laws and the Organic Act. The message urged a *bona fide* abandonment of polygamy, a disregard of ecclesiastical authority in civil affairs, and the enactment of laws that would end the necessity for the Utah Commission. Dire disasters were predicted unless these suggestions were heeded.

On January 13th, the Speaker of the House—Hon. William W. Riter—laid before that body a bill providing for the punishment of polygamy. The reputed author of the measure was Hon. William H. King, of Millard County. The bill did not become law, being deemed superfluous in view of other legislation upon the subject.

The Legislature adjourned on the 10th of March. Among the important measures enacted were bills for the bonding of the Territory to the amount of one hundred and fifty thousand dollars; a part of the money thus obtained to be used in the establishment of a Reform School and an Agricultural College; the former in Weber County, the latter in Cache County. This bonded debt—the first that Utah ever assumed—was rendered necessary by the exhaustion of the entire revenue of the Territory for two years in various appropriations.

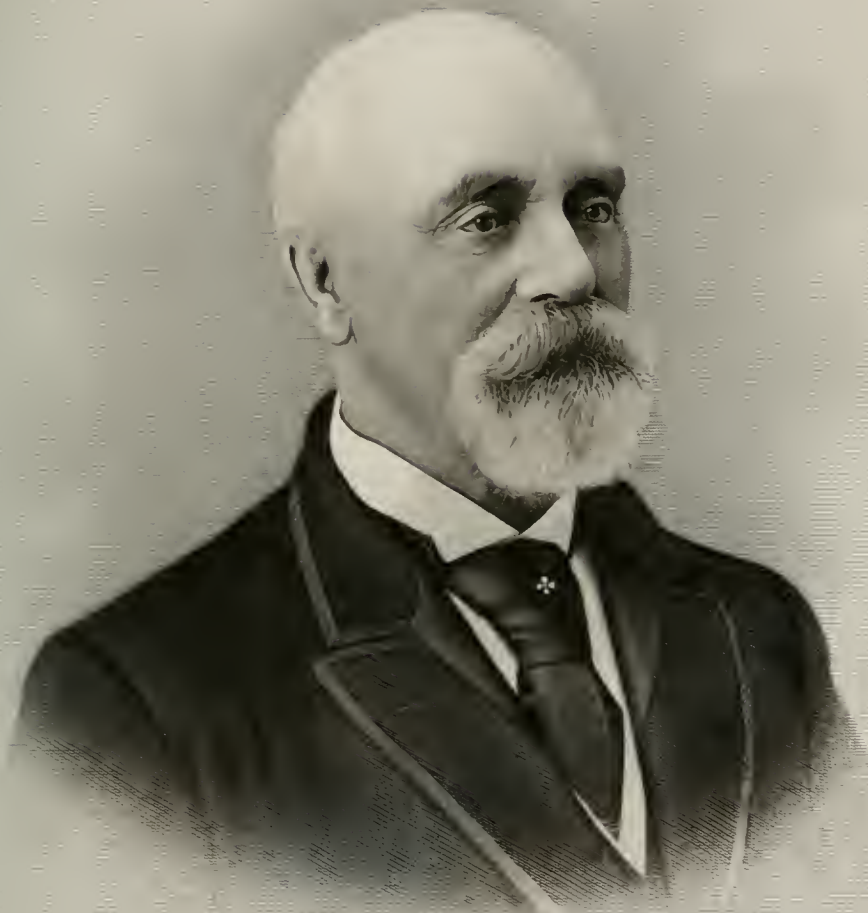
Fifty thousand dollars was given to the University of Deseret—three-fifths of the amount for the establishment of an institute for deaf mutes; twenty-five thousand dollars was appropriated for the improvement of Capitol Hill, and twenty thousand for the improvement of the Tenth Ward Square, which valuable properties had been bestowed by Salt Lake City upon the Territory. The Tenth Ward Square was to be used for permanent fair grounds. The board of directors of the Deseret Agricultural and Manufacturing Society, under whose auspices the Territorial fairs were held, was made elective by the joint vote of the Legislative Assembly. Non-Mormons were given representation upon this board, and upon the boards of the Reform School and Agricultural College.

Other important laws passed at this session were those establishing uniform systems of municipal and county government; providing for ward representation in city councils; and the election of county commissioners by districts in lieu of selectmen at large.

A law regulating marriage was also placed upon the statute book of the Territory. It was framed by Hon. E. D. Hoge. It prohibited polygamous marriages, miscegenation, marriages within the fourth degree of consanguinity, and required that public records of all marriages performed in Utah, be kept in the offices of the county clerks. The authority to solemnize marriages was restricted to civil magistrates and ministers and priests of any religious denomination, and these were to officiate only upon the presentation of licenses issued to the contracting parties by the county clerks.

Governor West, before the close of the session, sent to the Council nominations for certain offices; the same as those that Governor Murray and some of his predecessors had claimed the right to fill by appointment under Section Seven of the Organic Act; and the question of which, having been passed upon, and Governor Murray's action in appointing Arthur Pratt and Bolivar Roberts Territorial Auditor and Territorial Treasurer sustained by the Supreme Court of the Territory, was now pending in the Supreme Court of the United States. In view of this, and for other reasons,





Yours truly  
J. F. Woodman



the Council declined to take any action on the Governor's nominations.

Notwithstanding the differences between the Governor and the Legislature, their mutual relations were friendly and cordial, as were those of the Mormon and non-Mormon members of the Assembly. Judge Marshall, in tendering, as the spokesman of the Council, a parting testimonial to the President, Hon. Elias A. Smith, took occasion to express in warm terms his appreciation of the uniform courtesy and impartiality shown by the chairman, and his respect for his co-legislators; sentiments heartily echoed by Mr. Young, the other Liberal councilor. In the House a similar compliment was paid to Speaker Riter by Hon. C. E. Allen.

Just before the Salt Lake City election in February, 1888, it was decided by the leaders of the People's party—well aware of their ability to carry the city, as usual—to tender to their political opponents four places upon the ticket that was to be elected. The proposition was first made to a committee of prominent Liberals, and afterwards to a hastily convened meeting of about fifty members of that party, and by them accepted. Next it went before the Chamber of Commerce, where it was sanctioned and endorsed by nearly a two-thirds vote of the members. It was then laid before the municipal convention of the People's party, which met on the evening of the 4th of February.

Before the ticket had been formed, Mr. H. P. Richards, one of the delegates, arose and offered the following resolution:

*Whereas*, we desire to recognize the fact that our political opponents, though forming but a minority of the voting population, contribute to the public revenue by the payment of taxes, and include within their numbers many citizens who are permanent residents of this city and Territory, and that they should therefore be accorded fair representation in the management of public affairs;

*And whereas*, a joint committee composed of equal numbers from the opposing parties have met and agreed upon the proportion of offices in the City Council which will be satisfactory to both;

*And whereas*, a fusion of interests will divest the proposed combined ticket of distinctive party features, and render necessary a change of its usual title;

*Therefore*, Be it Resolved by this convention of delegates of the People's party:

First—That vacancies shall be left upon the ticket to be nominated and adopted this day for the municipal election to be held in this city on Monday, February 13th, 1888, for the names of one Alderman and three Councilors to be filled by nomination of the minority of the citizens.

Second—That the combined ticket shall be entitled THE CITIZENS' TICKET, and that it shall be the only authorized ticket for the said municipal election.

And Third—That this convention, after making nominations with the exceptions named herein, and the transaction of such other business as may be necessary, shall adjourn until Monday, February 6th, at 7 p.m., to receive the minority nominations to complete the ticket, and that we hereby pledge our votes and influence to elect The Citizens' Ticket in its entirety.

The resolution was discussed, and, after a slight amendment, adopted unanimously.

The four Liberals selected by representatives of their party to complete the fusion ticket were William S. McCornick, John E. Dooly, M. B. Sowles and Bolivar Roberts. The entire ticket was as follows :

Mayor—Francis Armstrong.

Aldermen :

First Municipal Ward—William W. Riter.

Second Municipal Ward—Thomas G. Webber.

Third Municipal Ward—William S. McCornick.

Fourth Municipal Ward—James Sharp.

Fifth Municipal Ward—George D. Pyper.

Councilors—Le Grand Young, John Clark, A. W. Carlson, Thomas E. Jeremy, Jr., John Fewson Smith, Samuel P. Teasdel, John E. Dooly, M. B. Sowles and Bolivar Roberts.

Recorder—Heber M. Wells.

Treasurer—Orson F. Whitney.

Assessor and Collector—Moses W. Taylor.

Marshal—Alfred Solomon.

But now there was war in the ranks of the Liberal party. Most of its leading men refused to countenance what had been done, and roundly rated those who had participated or acquiesced in the fusion movement. Their feelings were vented at meetings called for the dual purpose of protesting against the action taken by the Liberal

committee and the Chamber of Commerce, and of making up "a straight Gentile ticket" for the election. The first meeting was held at the Federal court room on the night of the 8th of February. Speeches were made as follows :

The chairman, J. B. Rosborough, declared that the apparently magnanimous offer of the People's party had less to do with municipal government here than the furtherance of Mormon purposes at Washington. He was in favor of "a square-toed fight," and predicted that in two years more the Liberals would control the city.

O. J. Hollister, one of those who favored the fusion movement, could not see any sacrifice of principle in accepting the offer of the People's party. The wisest thing to do was to accept it. He would feel at liberty to scratch the Citizens' Ticket as much as he pleased, but would not feel justified, after what had been done, in supporting an opposition ticket.

Speeches against the fusion movement were made by W. G. Van Horne, Henry W. Lawrence, P. L. Williams, Colonel E. Sells, E. D. Hoge and others ; and after the adoption of resolutions against it, Colonel Merritt nominated Henry W. Lawrence as the Liberal candidate for Mayor, which nomination was unanimously sustained. A committee of nine was authorized to nominate the rest of the "straight Gentile ticket." The meeting then adjourned to Friday, the 10th of February.

On the evening of the 9th those Liberals who favored the fusion movement met at the Federal court room to define their position. Among those present were Governor West, U. S. Marshal Dyer, Dr. J. F. Hamilton, J. L. Rawlins, W. H. Dickson, C. S. Varian, J. R. McBride, J. F. Bradley, the four Gentile candidates on the Citizens' Ticket and other prominent Liberals.

Judge McBride, who was in the chair, related how the proposition of the People's party came to him and other Liberals. It was made in good faith and should be accepted in the same spirit.

Judge Goodwin, of the *Tribune*, spoke in a similar strain. Some, he said, regarded it as a trick, and he thought it very probable that cap-

ital would be made out of it, but that would not hurt the Liberal party as much as to reject the offer. It looked to him like the dawn of a brighter day. The Liberals had nothing to lose and might gain much. They should give the Mormons credit for sincerity in the matter, and by supporting the fusion ticket, follow up success previously won.

Governor West heartily endorsed the movement and all that had been said in favor of it. He dwelt upon the necessity of a course that would give confidence to capital and attract settlers. New population rather than laws of Congress would work the desired changes in Utah. The People's party convention had given the four places upon the ticket, not as a favor, but as a right, and it would be wrong not to accept. He referred to the union of Mormons and Gentiles in the Chamber of Commerce, as an evidence of that progress for which he and all Liberals had been working. If the present proposition were rejected it would give good ground for the assertion that the Liberals sought civil control for purposes of plunder, and would not accept a degree of power unless it was sufficient to enable them to accomplish their object. It would not necessarily commit one to the Statehood movement to support the Citizens' Ticket, and if, as some said, the whole thing was a trick, the Liberals would not lose by it.

Mr. Dickson spoke in a conservative strain. While he looked upon what had been done as a mistake, he felt that it would be a greater mistake not to support it and thereby introduce division in the Liberal ranks. He was for the exercise of a spirit of forbearance and moderation.

Mr. C. W. Bennett condemned the fusion movement unqualifiedly. He said that a principle was at stake as great as that contended for by the barons who compelled King John to sign Magna Charta. He would lose his right hand before he would take a crumb from the Mormon table.

Mr. Varian echoed the sentiments of Mr. Dickson, and defended the Liberal nominees on the Citizens' Ticket against aspersions cast upon them by the anti-fusionists.



*Elias Crane*





Chairman McBride made the closing speech. He declared that the fusion movement was no mistake. He would not apologize for it and did not want any man to make any apology in his behalf. Mormons of integrity and standing in business circles had given the pledge that they would work for public improvements, and had asked the Gentiles to furnish some good men for the City Council. The Chamber of Commerce had supported the proposition by a vote of nearly two to one. What had been said at the previous night's meeting was like firing at a last year's bird's nest. It had no application to present conditions. Religion and politics should not be dragged into a purely business question. He was tired of the agitation that frightened away capital from the Territory. It was a reproach to the Liberal party and should cease. He would vote for the fusion ticket if he had to vote it alone.

Next evening the anti-fusionists held their adjourned meeting, and nominated the remainder of their ticket. In its entirety it stood as follows :

Mayor—Henry W. Lawrence.

Ward 1—Alderman, John M. Young; Councilors, R. Alf, Matt Cullen.

Ward 2—Alderman, J. B. Rosborough; Councilors, T. C. Armstrong, Jr., T. C. Bailey.

Ward 3—Alderman, N. Treweek; Councilor J. J. Daly.

Ward 4—Alderman, P. L. Williams; Councilors, W. F. James, Lewis Martin.

Ward 5—Alderman, E. B. Critchlow; Councilors, Charles Read, Ed. D. Swan.

Recorder—H. G. McMillan.

Treasurer—Joseph R. Walker.

Assessor and Collector—A. L. Williams.

Marshal—J. W. Greenman.

Speeches were made by Mr. Lawrence, Judge Bennett, P. L. Williams and Colonel Merritt. They objected to any compromise with the People's party, and criticized the Mormon Church, the *Deseret*

*News*, Governor West, the Legislature, the Chamber of Commerce, and the four Liberal candidates on "the Mormon ticket." These, it was said, would favor the putting down of polygamy if money questions were excluded, but if pecuniary considerations were involved they would ask for "a committee of conference." They would be mere figure-heads in the City Council and would not be able to accomplish anything in the way of good government. The anti-fusionists were accused of standing in the way of "a boom;" but the question in Utah was not one of money, but of principle. All the talk about trade, business, and "booms" might do very well to fill the bankers' vaults, but it should not influence men of heart and brain. The party the Liberals had fought so long was seeking affiliation with them in order to prolong its life. They would never give it an additional breath. The "unholy alliance" was denounced, and the Liberals were urged to poll their full strength for the straight Gentile ticket.

Governor West, being called for, arose, and after some effort, succeeded in catching the chairman's eye. He began in a firm, resolute tone, saying that he was present in response to a special invitation, and was there to defend his action in the pending issue. A voice in front of him shouted: "You are not called upon to defend it," whereupon there was a noisy demonstration of approval. The Governor, thoroughly on his own mettle, raised his voice above the din and shouted: "But I will defend it!" Shaking his finger at the individual who had interrupted him, he said: "You don't want to hear the defense; but you shall hear it; and when the honor of myself and those who are with me shall be vindicated, such cowards and cravens as you will quail." Here pandemonium broke loose, but the Governor went on: "I will be heard; while I am Governor of this Territory I will maintain the right of free speech."

The meeting was now in a terrific uproar, men on all sides angrily shouting and gesticulating. It seemed as if the Governor, who fearlessly stood his ground in the midst of the excited and threatening throng, was about to be violently assailed. He had



*John J. Daly*



been understood to apply the epithet "slaves" to those whom he denounced, and cries of "There are no slaves here," "Don't call us cowards," were heard at intervals above the tumult that caused the very building to tremble.

Finally, Chairman Rosborough, by dint of much rapping and many verbal appeals, was able to command attention. "If the Governor calls anybody here a slave again, I shall call him to order." [Applause and yells of approval.]

"I called no one a slave," thundered the Governor, "I did not use the word." He then faced the audience and endeavored to address them, but they kept up a din that effectually drowned his voice. Judge Gilchrist, stepping to the Governor's side, besought them to allow him to proceed. Angry yells and cries of "No," were the only result of his mediation, and it was not until General Connor had made a similar request that the noise subsided.

The Governor now defended the action of himself and his confederates. The fusion movement, he said, was in the interests of peace and progress. He called in question the motives of those who sought to perpetuate present conditions in order to make money out of them. This remark caused more confusion, and an animated cross-firing among the attorneys, who were accused of breeding strife in order to multiply fees for professional services. It was an unusual thing, the Governor said, for the Executive of a Territory to take part in municipal affairs, but he had done it with a good motive and would not shrink from the consequences.

Explanations and apologies followed and peace gradually resumed her sway.

The Citizens' Ticket was elected by a majority of 860, out of a total vote of 2,714. Only about twenty-five Liberals voted the ticket straight, while about fifty more cast their ballots for the four Gentile nominees, and scratched the names of the People's party candidates.

About the time of this election a most audacious attempt was made to seize upon a portion of the public lands belonging to Salt Lake City. The persons prominently known in the scheme were John

H. Linck, a real estate speculator from Colorado, attracted to Utah by the prospect of "the boom;" and Alma H. Winn, of Salt Lake City, a young man who had figured in the district courts as a stenographer. Mr. Linck, with a small host of men employed by him for the purpose, took possession of upwards of thirty acres of land on Arsenal Hill, just north of the city proper, but within the corporate limits. Mr. Winn contented himself with the Tenth Ward Square, one of the valuable vacant blocks, enclosing ten acres of realty, reserved for a public park, in the very heart of the municipality.

Mr. Linck's seizure was on the 13th of February, the very day of the election, and it was while the voting was in progress that the attention of the City Marshal—Alfred Solomon—was directed to the land-jumping operations on Arsenal Hill. Proceeding to the spot with half a dozen officers, he found about seventy-five men busily engaged, stretching wire fences in every direction, taking in lands belonging to the city. He ordered them to desist and removed their fencing material and a log house that they had constructed. One of the men—Robert Heywood—was arrested for not quitting work when first ordered to do so, but was immediately liberated, as the police were without warrants. Mr. Linck now applied to the U. S. Marshal for protection, and Heywood, having sworn out a complaint against the City Marshal, had him and Officer Pickett arrested for unlawfully laying hands upon his person.

As soon as the police had retired from the scene, the land-jumpers continued their nefarious operations. All day of the 13th and again on the 14th, gangs of men, in the employ of Mr. Linck and other real estate agents who had joined in the scheme, were at work surveying tracts from the brow of Arsenal Hill back to the northeast of Ensign Peak, and fencing them with posts and wires.

On the morning of the 15th the City Marshal proceeded to Arsenal Hill and posted a notice, warning all persons against trespassing, entering upon, or in any way placing holes, posts, fences or buildings upon the lands in question. The trespassers, now numbering over a hundred men, paid no attention to this notice, but went



*Yours Truly*

*Alfred Solomon*





on fencing, erecting tents and building shanties, until their camps, viewed at a distance, resembled a small town suddenly sprung up on the brow of the hill overlooking Salt Lake Valley. Some of them had been to the U. S. land office to make entries, but their applications had been refused, as it was found that Salt Lake City held the Government patent and consequently the absolute title to the lands seized. This was the first set-back they experienced. They were determined to hold on, however, trusting that the Federal courts would aid them.

The municipal authorities took matters coolly, and at first thought no further action on their part necessary until the case came into court. It was finally decided, however, to eject the land-jumpers, and not allow them the advantage of being in actual possession of the property when the question was adjudicated. Some of the attorneys consulted upon the subject were not in favor of summary action, thinking it might prejudice the cause of the municipality; but Mr. J. L. Rawlins, of the firm of Sheeks & Rawlins, retained by the city for this litigation, strongly urged it. His advice pleased the majority of the City Council, who held a special meeting on Wednesday evening, February 15th, and authorized the Mayor "to eject from the public or other lands of the city any and all persons trespassing, fencing or in any manner attempting to take possession of the same."

An order of this kind was precisely in keeping with the mood and spirit of the man who was then Mayor of Salt Lake City. Calling around him a few choice spirits, such as City Recorder Wells, Sheriff Burt and others, and organizing a posse from the regular police and a force of specials, Mayor Armstrong, on the morning of the 16th, proceeded with his men, about sixty in number, to the camps on Arsenal Hill. The first one reached was under the direction of a man named McDonald. Addressing him, the Mayor said: "I notify you and all parties concerned that these premises belong to the corporation of Salt Lake City. I command you to vacate forthwith, or you shall be immediately ejected by force."

McDonald replied that he would obey a process of court, which meant that he would not obey the mandate of the Mayor.

The latter did not stop to argue the point. "Throw them off," said he.

The order was instantly executed, though with no unnecessary violence. Mr. McDonald was pushed down the hill, off the grounds, and his companions were dealt with in like manner. "Down with those tents, and over the fence with them!" cried the Mayor. Down they came and over the fence they went. A guard was set, with instructions to "hold the fort," and the procession then wended its way northward to the next camp.

There a man named Adkins had charge. He also demurred to the Mayor's order to vacate, and the next moment was flying through the air from the impetus imparted by an improvised catapult consisting of two stalwart policemen. One of his comrades was also put outside the fence, and in a trice the land was cleared, board shanties demolished and all the paraphernalia of the camp thrown or carried into the road. One tent was spared long enough for its occupant, a woman, to secure her goods and utensils. It then shared the general fate.

And so from camp to camp the posse moved and the work of ejectment continued until the officers had thoroughly carried out their instructions. The Mayor, leaving a strong force under Andrew Smith and William Salmon to guard the hill, returned with the remainder of his party to the City Hall.

Thence, twenty of the Mayor's posse were dispatched to the Tenth Ward Square, whither Mr. Winn had previously sent two men to begin plowing, and where a notice was posted, reading: "This land for sale. Inquire within." They inquired for Mr. Winn. He was not upon the premises. Neither were his two employes a few moments after the arrival of the police. They beat a hasty retreat on first catching sight of the officers. The latter tore down the notice, dropped the plow in the road outside the field, and set six men to guard the grounds.



Francis Armstrong



Mr. Winn, accompanied by a Mr. Stevenson, subsequently paid a personal visit to the Mayor and timidly demanded a deed to the Square, offering to pay all charges against the property. The Mayor smiled and told him to keep his money. "Then you refuse it?" asked the pale and nervous stripling. "I do," answered the blunt and robust Mayor; and Winn and his friend vanished.

Washington Square, where now stands the handsome edifice known as the City and County Building, was seized about this time by certain parties who proposed to begin plowing; and later a demand for a deed came to the Mayor, with the same result as in the case of Mr. Winn. Liberty Park and other properties were also threatened, but the summary proceedings on Arsenal Hill and at the Tenth Ward Square put a stop to further land-jumping.

All eyes were now turned to the courts.

Mayor Armstrong, Marshal Solomon, Sheriff Burt, Recorder Wells, and about sixty others had been placed under arrest, charged with forcibly entering land belonging to John H. Linck. The complaining witness was R. D. McDonald. The case came before U. S. Commissioner Norrell on the 17th of February. Arthur Brown and J. R. McBride appeared for the plaintiffs, and Sheeks and Rawlins for the defendants. Several witnesses were examined, all Mr. Linck's employes, and the facts already set forth in relation to the Arsenal Hill affair substantiated.

The decision was in favor of the defendants, the Commissioner holding that the city and not Mr. Linck was in legal possession of the lands, claiming them under a Government patent, and that the officers had not used any more force than necessary to protect the rights of the corporation.

Mr. McDonald had also charged Marshal Solomon and Sheriff Burt with assault, they being the two officers who had pushed him down the hill. This case followed the other immediately and had a similar ending, the defendants being discharged.

The case of Robert Heywood *vs.* Marshal Solomon and Officer Pickett, for unlawful arrest, was heard by the Commissioner on the

21st of February. After listening to the evidence and arguments, it was decided that technical guilt attached to the officers, Mr. Pickett, acting under Mr. Solomon's orders, having arrested Heywood without a warrant. A fine of fifty cents and costs was assessed against and paid by each defendant, and thus the proceedings terminated.

The issue in these cases was another set-back to the land-jumpers, and some of them now decided to give up the fight. Among the first to come to this wise conclusion was Mr. Alma H. Winn, who, in a communication to the city authorities, magnanimously offered to give them a deed to the Tenth Ward Square, which he claimed to have acquired by due process of law. Their gratitude, as a matter of course, knew no bounds. So overjoyed were the Mayor and City Council that they forgot to thank Mr. Winn, or to recognize in any way his generous gift to the municipality.

Mr. Linck, having instituted proceedings in the District Court, determined to push matters a little farther. During the month of February the case of J. H. Linck vs. Francis Armstrong, Alfred Solomon, Andrew Burt and others came before Chief Justice Zane, on an order previously made, to show cause why an injunction should not issue restraining them from holding land for Salt Lake City corporation. The defense filed an answer denying all the allegations of the plaintiff, and setting up that they were acting in behalf of the city, which held the title to the lands in question. The patent from the Government to the city corporation was introduced in evidence, also the deed from the Probate Court to the city, as the owner of the lands in fee simple. The case having been argued—by McBride and Brown for the plaintiff, and by Sheeks and Rawlins for the defendants—it was submitted and taken under advisement.

Judge Zane, true to his principles, ruled upon the side of law and order. He refused to grant the injunction and justified the action of the city authorities in preventing Mr. Linck and his associates from seizing upon the city's lands. The decision, delivered on the 28th of February, cited the fact that those lands were entered under the Congressional townsite act by the authorities of Salt Lake City in the

year 1871, and that on June 1st, 1872, the Government patent was issued to the Mayor, who thus became a trustee, holding said lands for the occupants thereof. The execution of that trust was to be under such regulations as the Territorial Legislature might prescribe. That body, in legislating upon the subject, had proceeded upon the theory, which was correct, that the settlers were entitled to the lands they actually occupied by paying the original cost and expense of survey. The unclaimed lands were regarded as being held in trust for the common use and benefit of the residents of the City. But the city authorities must dispose of these lands according to the acts of the Legislature; not hold them for generations and prevent settlement and occupancy. They must be surveyed, platted, divided into lots with streets; and reserving such portions as might be necessary for public purposes, the remainder should be sold and the proceeds devoted to the common good. The failure to do this promptly did not give individuals the right to seize upon such lands, of which there was a constructive occupancy by the city, which held the title to them.\*

The decision of the Chief Justice gave general satisfaction, Gentiles as well as Mormons applauding it. It was this decision, and the trouble preceding it, that caused the city to take early steps to dispose of its unsettled lands. Most of them, within the next two years, were sold at auction and the proceeds turned into the city treasury.

It was immediately after Judge Zane's decision that the city gave to the Territory that portion of the Arsenal Hill lands now known as Capitol Hill, as a site for State Capitol buildings. The gift was tendered and accepted on the 28th of February. The gift of the Tenth Ward Square, for permanent fair grounds, was tendered on the 6th of March and accepted three days later. Appropriations for the improvement of both properties were made by the Legislature before its adjournment.

It was about this time that certain energetic spirits in the Salt Lake Chamber of Commerce conceived a plan, as original as it was

effective, to advertise Salt Lake City throughout the United States. A fund was raised among the business men and other citizens of the town, and a car, lent without charge by the Union Pacific Railroad Company, was elegantly furnished and fitted up with a fine exhibit of Utah products, and sent touring through the principal cities of the East. Handsomely inscribed on either side of the car was the legend, "Utah Palace Exposition Car; The Resources of Salt Lake City, the Gem City of the Rocky Mountains; Free Exhibit sent out under the auspices of the Salt Lake Chamber of Commerce."

The car with its contents—the latter tastefully arranged under the direction of Mr. W. H. Culmer—was placed in charge of Mr. H. L. A. Culmer, one of the directors of the Chamber, and editor of its official organ, the *Journal of Commerce*. A better choice for the purpose in view could not have been made. Among the projectors of the enterprise—which was brilliantly successful, insomuch that it was imitated on a larger scale by California and other ambitious commonwealths—were Messrs. Fred. Auerbach, Joseph R. Walker, John W. Young, Groesbeck Brothers, Kimball and Lawrence and Matthew Cullen; each of whom subscribed five hundred dollars to the advertising fund, which, within a week, reached the respectable figure of eleven thousand dollars. The car had as its advance agents Messrs. F. W. Wickersham, R. W. Sloan, W. H. Sells, Joseph Geoghegan and Judge E. F. Colburn, who performed their labors with great zeal and efficiency, traveling among the principal cities of the Middle States, distributing printed matter and spreading information far and wide.

The Exposition Car left Salt Lake City on the 6th of June, 1888. During its three months' absence from home it was opened in sixty cities; it traveled about nine thousand miles and was visited by nearly two hundred thousand people. It distributed about fourteen tons of printed matter, and secured favorable notices in many of the

\* The Arsenal Hill lands had been surveyed and platted thirteen years before, but the draft had been lost by the city surveyor.




most influential newspapers of the country. The cost of the trip was \$3,339.25.

Thus was Salt Lake City advertised, and the splendid resources of this region brought to the attention of many thousands of people, numbers of whom, within a short time, made Utah their home.

## CHAPTER XXIV.

1888-1889.

CHIEF JUSTICE SANDFORD SUCCEEDS CHIEF JUSTICE ZANE—A FOURTH JUDGE FOR UTAH—JOHN W. JUDD THE NEW APPOINTEE—A DAY OF LENITY DAWNS—APOSTLES GEORGE Q. CANNON AND FRANCIS M. LYMAN, WITH OTHER ELDERS, SURRENDER THEMSELVES TO BE DEALT WITH ACCORDING TO LAW—THE TWO APOSTLES SENT TO THE PENITENTIARY—MOSES THATCHER'S ARREST AND DISCHARGE—OFFICIAL REPORT OF CONVICTIONS IN UTAH AND IDAHO UNDER THE ANTI-POLYGAMY LAWS—DELEGATE CAINE AND THE "DEAD ISSUE"—THE PERSONAL PROPERTY OF THE MORMON CHURCH FORFEITED AND ESCHEATED—AN APPEAL TO THE COURT OF LAST RESORT—THE COST OF ONE YEAR'S RECEIVERSHIP—THE "SAGE BRUSH DEMOCRACY"—JOHN T. CAINE RE-ELECTED TO CONGRESS—THE UTAH STATEHOOD QUESTION BEFORE THE HOUSE COMMITTEE ON TERRITORIES—FAVORABLE ACTION POSTPONED.

 HE summer of 1888 witnessed two important changes in the judiciary of Utah. Chief justice Zane was succeeded in office at the expiration of his term, and a fourth judge was added to the Supreme Bench of the Territory. Judge Zane's successor was Hon. Elliot Sandford, of New York. The fourth judge, appointed under an act of Congress approved June 25th of this year, was Hon. John W. Judd, of Tennessee. The new officials, who were both staunch Democrats, received their appointments on the 9th of July.

Two days before the naming of a successor to Chief Justice Zane, at a meeting held at the Salt Lake Chamber of Commerce, a petition was unanimously approved, asking President Cleveland to reappoint him; "his excellence as a Judge and his character as a man" being the reasons assigned for the request. A telegram from the secretary of the Chamber to Senator Cullom, at Washington, apprised him and other friends of Judge Zane of what was being done in his behalf, and asked that the President be informed. The petition, having been signed by a number of prominent Democrats and Republicans—though only a few of the former attached their



*Francis M. Lyman*



names to it—was circulated for other signatures. While these were being obtained, the telegraph brought the news of Judge Sandford's selection as Chief Justice of Utah.

Judge Judd, the first of the newly-appointed officials to arrive in the Territory, was a typical son of Tennessee. Blunt and outspoken, but withal of a genial nature, he was an able lawyer, thoroughly devoted to his profession. In his youth he had been a Confederate soldier. He was born and reared in Sumner County, but at the time of his appointment to Utah was residing at Springfield, Robertson County, in his native State.

Judge Judd reached Ogden on the evening of the 23rd of August, and qualified for office next day, in the First District Court in that city. Provo, however, became his place of residence. From the first, he and his family mingled freely with the Mormons—much to the displeasure of some of his Anti-Mormon friends—and in turn made them welcome at his home. When taken to task for it, he would say: "I cannot mete out justice to a people I do not know." He became quite popular in Utah County. "The pride of my life," said he to the author in 1894, "is that I am respected and esteemed in that very part where it was my duty to sit in judgment upon so many persons and punish them for infractions of the Edmunds Law."

Chief Justice Sandford arrived at Salt Lake City on Sunday evening, August 26th, and took the oath of office on the day following, in the Supreme Court of the Territory. He was a gentleman of culture and refinement, and the possessor of a brave and independent soul. We regret that the materials are not at hand for a more extended biography of this upright and virtuous magistrate, whose only enemies in Utah were those who could not appreciate the wise and humane motives that actuated him.

From the hour of the installation of Chief Justice Sandford, to the hour of his removal, as the result of a change in the National Administration, the design to divest judicial proceedings in these parts of everything savoring of undue harshness and severity was

more than ever apparent. Judge Zane had been an exponent of that trend of thought which regarded sternness and heavy penalties as necessary to the speedy and effectual settlement of the Mormon problem. Judge Sandford took the view that there was no need of so much harshness as had been shown. Judge Judd was influenced by a similar spirit. He did not deem it wise to wage a crusade against polygamy. "Treat it as any other crime," was the expression of his policy in relation to it; a policy voiced previously by Associate Justice Emerson.

As soon as it became known that these were the principles that would govern the new Judges, many persons indicted under the Edmunds Act, who had long evaded legal process, surrendered themselves to the United States Marshal and asked to be taken before the courts and dealt with according to law.

The first to pursue this course was Apostle George Q. Cannon. With the facts of his arrest and the forfeiture of his bond in 1886, the reader is already acquainted. His surrender to the Federal authorities took place as follows:

Shortly before ten o'clock on the morning of Monday, September 17, 1888, Apostle Cannon, accompanied by his attorneys, F. S. Richards and Le Grand Young, was driven in a carriage to the office of the U. S. Marshal in the Wasatch Block. A few minutes later he walked across the hall into the Federal court room, and took a seat within the railing. The Court had not yet opened for the day, and few if any people were present; but as soon as it was noised abroad that George Q. Cannon had surrendered himself and was in the court room awaiting judicial action, the place rapidly filled. Judge Sandford arrived and proceedings at once began.

U. S. Attorney Peters announced that George Q. Cannon was in court and that he desired to be arraigned on two indictments pending against him for unlawful cohabitation. Clerk McMillan read the indictments; the first covering a period from July 2, 1885, to December 31, 1885, the second a period from March 21, 1886, to September 15, 1888. To both the defendant pleaded guilty. Mr. Richards

stated that his client waived his right to have sentence pronounced at some future time, and asked that it be pronounced immediately. Mr. Peters then moved for judgment.

COURT (addressing Mr. Cannon.)—"Have you any reason why the sentence of the Court should not now be passed upon you?"

MR. CANNON.—"No reason."

COURT.—"You have been arraigned under the indictments just now read to you, and by your plea of guilty you admit that you have committed the offense with which you have been charged. It now remains for the Court to pass its sentence upon you. Your plea of guilty has saved the Government the expense and labor of trial, and your submission is an acknowledgement—at least, admission—that you submit yourself to the authority of the law and admit the supremacy of the law, which every man must bow to and give obedience to. The offense to which you have pleaded guilty is made by the statute of Congress a misdemeanor, and the punishment fixed by that statute is either a fine not to exceed three hundred dollars or imprisonment for six months, or both, within the discretion of the Court. I am not unmindful that you have submitted yourself to the Court, that you have spared the Government the expense of trial, and that, so far as I know, this is your first appearance. Am I right?"

MR. CANNON.—"Yes, sir."

MR. PETERS.—"The first time he has been charged with this offense. Of course it implies the commission of the offense of polygamy, which is now barred by the statute of limitations."

COURT.—"That is not before the Court."

Continuing, the Court said: "Taking into consideration these circumstances, I impose upon you, and this is the sentence of the Court, that you pay a fine of two hundred dollars, and be imprisoned in the Penitentiary seventy-five days."

MR. PETERS.—"That is but the one case, if your honor please."

COURT.—"That is on the first indictment."

MR. PETERS.—"I now move for judgment on the second, your honor"

COURT (to defendant).—"Have you any reason why the sentence of the Court should not now be pronounced upon you for the second indictment?"

MR. CANNON.—"No, sir."

COURT.—"I am, under the provisions of the statute enacted to cover this offense, authorized, as I just now stated, to impose upon you certain limited punishments. In this case I impose upon you a further punishment. The sentence of the Court is that you pay a fine of two hundred and fifty dollars, and that you be incarcerated in the Penitentiary one hundred days."

In answer to a question by Mr. Peters, the Court said the second sentence would begin at the termination of the first.

The defendant, accompanied by Marshal Dyer, passed out of the court room, shaking hands as he went with the many friends who flocked around him, and after taking leave of his sons, John Q., Frank and Abraham, in the Marshal's office, he entered a carriage on Second South Street and was conveyed to the Penitentiary.

Immediately after the case of Apostle Cannon was disposed of, several other Mormon Elders who had surrendered were dealt with in like manner. Among these was Archibald N. Hill, who pleaded guilty to an indictment charging him with unlawful cohabitation from May 1, 1884, to April 24, 1887.

Mr. Richards, his attorney, asked the Court to suspend sentence, as the defendant was seventy-two years of age and had no great amount of property.

Mr. Peters opposed the request, representing that Mr. Hill had been arrested once and had escaped from the officers. As to his property, he had distributed that to the branches of his family.

COURT.—"That is commendable rather than otherwise."

After further inquiries as to the circumstances of the defendant, the Judge imposed a fine of fifty dollars and sentenced him to imprisonment for fifty days.

Samuel H. Hill was then called. He had been indicted twice under the segregating process. One count was dismissed and upon



the other he pleaded guilty. His attorney, Le Grand Young, asked that leniency be shown, as his client had voluntarily surrendered. Again Mr. Peters objected, stating that Mr. Hill had kept out of the way of the officers for two years.

COURT.—“Has he been out on bail?”

MR. PETERS.—“He was out on leg bail.”

COURT.—“We do not recognize such bail.”

MR. YOUNG.—“He has never before been arrested.”

COURT.—“If he had been it would be condoned by his pleading guilty now.”

Sixty days' imprisonment and a fine of seventy-five dollars was the penalty imposed in this case.

William J. Parkin also pleaded guilty to unlawful cohabitation and was fined fifty dollars and sentenced to fifty days' imprisonment.

Daniel Lewis and James Wolstenholme entered similar pleas and sentence in their cases was suspended.

Then followed the trial of Andrew Anderson on a charge of unlawful cohabitation, to which he pleaded not guilty. Mary Anderson, his daughter, was the first witness sworn. During the examination she was asked by Mr. Peters if a certain woman—Carrie P. Larsen—was reputed in the family to be her father's second wife. She answered in the negative.

Mr. Sheeks, for the defense, objected to this testimony as incompetent.

Mr. Peters replied that the prosecution thought they could prove a marriage by this kind of testimony.

COURT.—“You are not proving a marriage now.”

MR. PETERS.—“Yes, we desire to.”

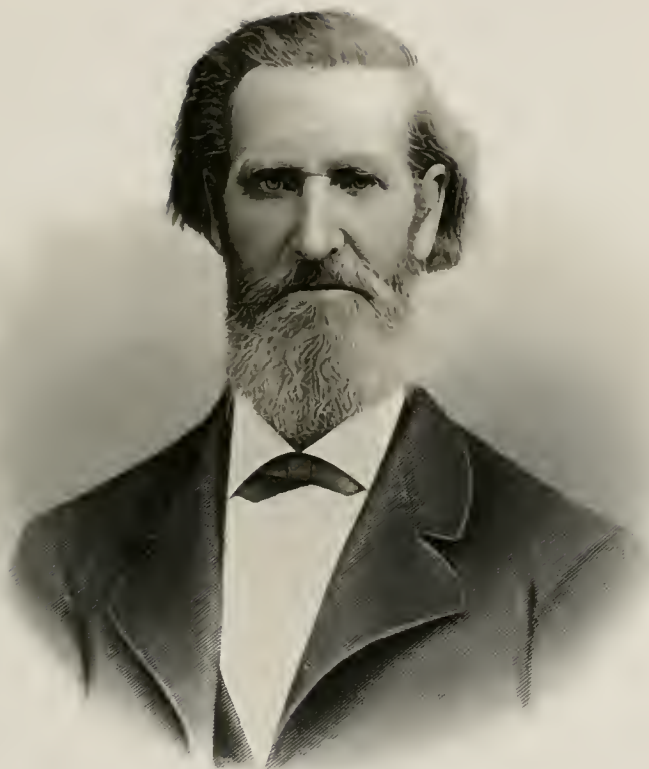
COURT.—“But you are not. Show me your authorities. General representation that a man is a forger does not prove him to be a forger. If there is an exception where reputation can be a proof of any fact, I do not know it. I will allow you to show the general reputation as to their relations.”

The examination proceeded, but in a few moments another hook was put into the jaw of the prosecuting leviathan, the Court instructing Mr. Peters to confine his proof of the alleged offense to the period covered by the indictment. The result of the trial was the defendant's acquittal.

These instances will serve to show the general procedure in the Third District Court during the period of Judge Sandford's incumbency. As a matter of course he was much criticised for his lenity toward polygamous delendants, being deemed by the Anti-Mormons an enemy to the cause of progress and reform. But he was as brave as he was considerate and humane, and steadily held on his way, doing his duty conscientiously, and winning the respect and esteem of the majority of the best people of all classes.

Among the notable arrests, this year, was that of Apostle Moses Thatcher. It occurred at his home in Logan, on the 4th of September. The Apostle, who had lately returned from Mexico, did not seem surprised at his apprehension. In fact, he had taken no pains to avoid it. Deputies Steele and Whetstone called at his house about ten o'clock in the evening and served the warrant. Mr. Thatcher, who had not retired, courteously invited them in, that they might read the process by the light of the lamp. He accompanied them to the office of the U. S. Commissioner, where he gave bonds in the sum of two thousand dollars for his appearance when wanted; his brother, George W. Thatcher, and his brother-in-law, Aaron F. Farr, Jr., being his bondsmen. On September 7th, after an examination before the Commissioner, the defendant was discharged, there being no evidence upon which to hold him.

The next important case dealt with was that of Apostle Francis M. Lyman, who, on the 12th of November, gave himself up to the U. S. Marshal, and was placed under bonds of one thousand five hundred dollars to answer to a charge of unlawful cohabitation. He had been indicted five times for the same offense. A few weeks later he pleaded guilty to one indietment—the others being dismissed—and was sentenced by Judge Sandford to eighty-five days'



Zachary Cheney  
Age 76



imprisonment and to pay a fine of two hundred dollars and costs. He forthwith joined his fellow Apostle in the Penitentiary.

Marked changes had taken place at "The Pen" since the first Elders were confined there. In the fall of 1884 it was a mere corral, a few acres of bench land enclosed by high mud walls built upon a rectangle, and containing two or three small houses; one of which—a long, low, log structure—served the double purpose of dining-room and meeting hall, while another was used for a dormitory. The beds were arranged one above another, along the sides of the interior, much the same as berths in the steerage of an ocean steamer. The prisoners were locked in at night, and let out in the morning, to wander at will over the ample space within the walls, so long as they did not pass the "dead line," near the heavy wooden and iron gates that were the only means of egress from or entrance into the prison yard. To pass that line without permission was death, if the culprit were seen by the armed sentries upon the walls; or in lieu of that, some lighter punishment, according to the gravity of the offense. An iron cage called "the sweat box," in which refractory convicts were placed, stood in one corner of the corral. The Warden's quarters, where female prisoners were kept, with the kitchen and store-rooms—one of which was utilized as a reception room, or place for interviews between inmates and visitors—were outside the gates, at the west end of the enclosure.

Such in brief was the Utah Penitentiary—a wretchedly furnished institution—at the beginning of the crusade. Now, much of this was changed. Congress having made an appropriation for the purpose, new buildings, heated with steam and otherwise well appointed, had been erected in the old prison yard, and the log dining room and other primitive equipments were things of the past. New cells had been constructed, lavatories and other conveniences provided, and though the discipline was stricter than ever, the prison and its surroundings were kept clean and wholesome, and the general condition of the inmates was far more comfortable than formerly. Arthur Pratt was the efficient Warden of the Penitentiary at this period.

Reference has been made to the strictures laid upon Chief Justice Sandford for his lenity toward polygamous defendants. Doubtless he was consoled by the fact—if he needed such consolation—that he was not the only official criticised for pursuing a conservative course in relation to the Mormons. Even the President of the United States was blamed for having pardoned, as the Edmunds Act empowered him to do, certain prisoners, confined for offenses against that statute. The desire to expose the President to censure on this score led to the introduction in the National House of Representatives, on August 13, 1888, of the following resolution, offered by Mr. Dubois, of Idaho:

*Resolved*, That the Attorney-General be requested to furnish to the House of Representatives a list of pardons granted by the President of the United States to persons convicted of the crime of unlawful cohabitation in Utah Territory and in Idaho Territory since March 4, 1886, giving the name, date of sentence, length of sentence, and date of pardon in each case.

The resolution went to the judiciary committee, which, on August 25th, reported the following as a substitute:

*Resolved*, That the Attorney-General be requested to furnish to the House of Representatives the number of convictions for polygamy, adultery, and unlawful cohabitation had in the Territories of Utah and Idaho under the provisions of the anti-polygamy law of 1862, and the act of 1882 amendatory thereof, and the act of March 3, 1887, and the dates thereof as shown by the records of the Department of Justice, together with the amount of fines, forfeitures, and costs collected from said prosecutions, with the date of judgments under which said several sums were collected; a list of pardons granted by the President of the United States to persons convicted of such crimes of polygamy, adultery, and unlawful cohabitation, respectively, in the said Territories of Utah and Idaho, giving the name, date of sentence, time of imprisonment, amount of fine, date of pardon, and the reason for granting the same in each case.

It was upon the presentation of this substitute resolution that Hon. John T. Caine, in answer to Mr. Dubois, who had asserted that half the adult population of Utah was in polygamy; that the Mormons did not intend to cease its practice; and that the granting of so many pardons had a tendency to encourage their obduracy, made the notable speech in which he declared that polygamy in Utah was “a dead issue;” that it had “ceased to exist.” He maintained that

the purpose of those who originated the resolution was political, but he nevertheless favored its adoption. The information it called for would show conclusively that undue leniency had not been shown to convicted persons in Utah and Idaho, and would also demonstrate under whose administration the laws against polygamy had been most rigidly enforced.

Mr. Caine meant by this that the resolution offered by the Republican, Mr. Dubois, would act as a boomerang; that it would benefit instead of injure the Democratic cause, since it would prove that while Republican office-holders had been the most active agents of the anti-polygamy crusade, it was under a Democratic Administration they had done their work.\* He went on to show that the President was given authority to grant amnesty to polygamists in certain cases, and that he had not exceeded his duty or the bounds of reason in so doing. He then said:

Out of the hundreds convicted in Utah and Idaho very few have been granted pardons, and only those who have served a portion of their time in the Penitentiary. None, however, have been pardoned except in cases of extreme old age, sickness, or for other good reasons. No such pardon has been granted except upon the recommendation of the United States District Attorney who prosecuted the case. Some petitions have been favorably indorsed by the Judges who tried the cases and sometimes the Governor of the Territory, the United States Marshal and other Federal officials have joined in the request.

The petitions for Executive clemency which have been presented through me, have been mostly signed by non-Mormons, the bankers, merchants, and other prominent business men of Utah, who, while strong advocates of the enforcement of the anti-polygamy laws, do not consider it necessary to the safety of the nation and the perpetuity of American institutions, that men over seventy years of age should be imprisoned for unlawful cohabitation.

I will not attempt to notice any criticisms made upon the President for his action in granting a few pardons to sick and aged men in Utah and Idaho. I believe the President is abundantly able to take care of himself, and if this resolution is adopted the Attorney-General will give such reasons for the President's action in these matters as will be entirely satisfactory to this House and to the country.

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\* It was Delegate Caine's suggestion, to this effect, to Messrs. Culberson and Rogers, Democrats, the former, chairman of the Judiciary Committee and the latter the member of that Committee who reported the resolution, that caused the presentation of the substitute in lieu of the original. In fact, it was the gentleman from Utah who, at the request of Chairman Culberson, drafted the substitute.

The substitute resolution was adopted, and the result was the presentation in the House, on the 14th of September, of the following letter from the Acting Attorney-General :

DEPARTMENT OF JUSTICE, WASHINGTON.

September 13, 1888.

SIR.—In reply to the resolution of the 25th ultimo of the House of Representatives, in relation to convictions for polygamy in the Territories of Utah and Idaho, I have the honor to transmit the accompanying information. The records of the Department show that under the provisions of the anti-polygamy law of 1882 and the act of 1882 amendatory thereof, and the act of March 3, 1887, there have been in the Territory of Utah, four hundred and seventy convictions for polygamy, adultery, and unlawful cohabitation with fines imposed, and thirty convictions where the sentence was imprisonment without fine, making a total for that Territory of five hundred. There have been in the Territory of Idaho forty-eight convictions for polygamy, adultery, and unlawful cohabitation with fines imposed, and forty-one convictions where the sentence was imprisonment without fine, making a total of that Territory for eighty-nine.

The accompanying lists, marked, respectively, Exhibits A and B, show the cases in the Territories of Utah and Idaho in which fines were imposed, with the date of the judgment in each case and the amount, if any, collected. There have been fourteen pardons granted by the President of the United States to persons convicted under the above acts in the Territories of Utah and Idaho, and the accompanying list, marked Exhibit C, shows the name, date of sentence, sentence, date of pardon, and the reasons for granting the same in each case.

There was one conviction in Utah in March, 1875, and one in April, 1881; in October and November, 1884, one in Idaho and three in Utah; in 1885, beginning with the March term, thirty-nine in Utah and sixteen in Idaho; in 1886, one hundred and twelve in Utah and twenty in Idaho; in 1887, two hundred and fourteen in Utah and six in Idaho, and in 1888, one hundred in Utah and five in Idaho—in all five hundred and eighty-nine convictions. There have been collected in Utah, fines and costs in the above cases to the amount of \$45,956.90, and in Idaho to the amount of \$2,251.10—in all \$48,208, of fines and costs, and in Utah in April, 1886, a forfeiture of \$25,000.

Very Respectfully,

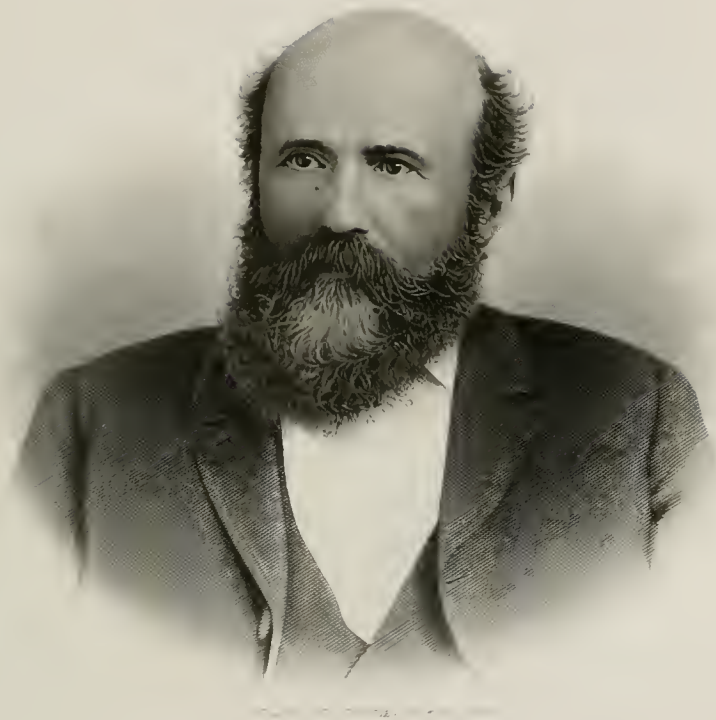
G. A. JENKS,

Acting-Attorney General.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Following are the "Exhibits" referred to in the body of the foregoing letter. As a very important record of the period of the "The Crusade," they are deemed worthy of preservation in this history:





*D. H. Schmitt*

Age 60.



EXHIBIT A.

CONVICTIONS FOR POLYGAMY IN THE TERRITORY OF UTAH.

District.	Court Docket No.	Against whom or what.	Form and cause of action.	When commenced.	Judgment or Decree.			Amount collected.
					Date.	Principal.	Cost.	
		George Reynolds	Bigamy	Oct. 26, 1874	Mar. 1875	\$300		
		Samuel Stone	"	Apr. 14, 1881	Apr. 1881	250		
3d		Orson P. Arnold	Unlawful Cohabitation.	Mar. 30, 1885	Apr. 15, 1885	300		\$300.00
3d	191	John Sharp	"	Apr. 10, 1885	Sept. 18, 1885	300	\$ 24.35	307.50
3d	183	S. W. Sears	"	Mar. 27, 1885	Sept. 29, 1885	300	28.45	310.00
3d	212	John Daynes	"	June 28, 1885	Oct. 1, 1885	150	27.80	159.60
3d	234	T. O. Angelt	"	Sept. 26, 1885	Sept. 26, 1885	150	29.50	165.50
3d	196	Edward Brain	"	Apr. 16, 1885	Oct. 2, 1885	300	139.50	374.30
3d		A. M. Musser	"	Apr. 3, 1885	May 3, 1885	300		300.00
3d		James C. Watson	"	Apr. 4, 1885	"	300		3.00
1st		F. A. Brown	"	May 20, 1885	July 10, 1885	300		
1st		Moroni Brown	"	"	July 11, 1885	300		
1st		Job Pingree	"	May 27, 1885	July 13, 1885	300		300.00
3d		Rudger Clawson	Polygamy Unlawful Cohabitation.	Apr. 24, 1884	Nov. 3, 1884	500		
3d			"	"	"	300		
3d		Joseph N. Evans	Polygamy Unlawful Cohabitation.	Nov. 17, 1882	Nov. 8, 1884	250		
3d		John Aird	"	Feb. 4, 1885	Apr. 30, 1885	300		
3d		Parley P. Pratt	"	Mar. 24, 1885	May 2, 1885	300		
3d		Angus M. Cannon	"	Feb. 7, 1885	May 9, 1885	300		300.00
3d	185	Aurelius Miner	"	Feb. 6, 1885	Oct. 17, 1885	300	158.30	370.90
3d	198	William H. Rosstter	"	Apr. 13, 1885	Oct. 10, 1885	300	90.75	328.20
3d	202	H. B. Clawson	"	May 19, 1885	Sept. 29, 1885	300	37.90	321.00
3d	207	Alfred Best	"	May 29, 1885	Oct. 5, 1885	300	167.30	378.55
3d	214	George Romney	"	June 26, 1885	Oct. 10, 1885	300	28.00	312.00
2d		W. Fotheringham	"	Mar. 11, 1885	May 18, 1885	200		
2d		David Lewis	"	May 11, 1885	May 21, 1885	300		200.00
3d	197	Emil Olsen	"	Apr. 16, 1885	Oct. 13, 1885	300	83.20	
3d	200	Andrew W. Cooley	"	Apr. 19, 1885	Oct. 5, 1885	300	120.00	
3d	203	David E. Davis	"	May 19, 1885	"	300	145.70	
3d	204	Isaac Groo	"	"	"	300	61.70	349.70
3d	208	Charles Seal	"	May 29, 1885	"	300	143.20	
3d	210	William D. Newsom	Polygamy and Unlawful Cohabitation	June 26, 1885	Oct. 17, 1885	800	191.60	
3d	211	Fred H. Hansen	Unlawful Cohabitation.	"	Nov. 5, 1885	300	172.00	
3d	215	John Nicholson	"	"	Oct. 13, 1885	300	115.25	362.25
3d	216	Andrew Smith	"	"	"	300	129.05	
3d	217	John Connelly	"	"	"	300	41.95	318.95
3d	232	Robert Swain	"	Sept. 26, 1885	Nov. 2, 1885	300	61.40	
3d	235	Thomas Poreher	"	"	Nov. 21, 1885	300	45.30	
3d	240	Charles L. White	"	Oct. 6, 1885	Oct. 6, 1885	300	36.50	
3d	259	John W. Keddington	"	Nov. 6, 1885	Nov. 21, 1885	300	44.90	
1st	640	James Taylor	"	May 27, 1885	June 16, 1886	300		300.00
1st	783	Warren G. Child	"	Jan. 9, 1886	"	300		300.00
1st	814	Amos Maycock	"	Feb. 16, 1886	Feb. 23, 1886	100		109.50
3d	192	Henry Dinwoodey	"	Apr. 10, 1885	"	300	51.95	354.75
2d	323	John Lang	"	May 17, 1885	Sept. 29, 1885	200		
2d	327	James Twitcheil	"	May 9, 1885	Dec. 22, 1885	300	328.10	
2d	324	Henry Gale	"	May 12, 1885	Dec. 15, 1885	300		
2d	353	Culbert King	"	Dec. 10, 1883	Dec. 22, 1885	300	112.50	
2d	317	L. D. Watson	"	Mar. 11, 1885	Mar. 25, 1886	300		
1st	56	John Duke	"	Oct. 14, 1885	Apr. 13, 1886	300		3.00
1st	80	Nephi J. Bates	"	Mar. 4, 1886	Apr. 13, 1886	1	293.20	294.20
1st	643	James H. Nelson	"	May 20, 1885	Jan. 16, 1886	300		
1st	739	David M. Stuart	"	Dec. 5, 1885	Jan. 4, 1886	300		
1st	741	Lorenzo Snow	"	"	Jan. 5, 1886	300	151.50	451.50
1st	742	"	"	"	"	300		
1st	743	"	"	"	"	300		
1st	800	William G. Saunders	"	Feb. 9, 1886	Feb. 16, 1886	300	25.00	
1st	812	Charles H. Greenwell	"	Feb. 16, 1886	Feb. 25, 1886	300	11.00	311.00
1st	88	William M. Bromley	"	Mar. 13, 1886	Apr. 13, 1886	300	207.80	507.65
1st	90	Nicholas H. Groesbeck	"	Mar. 18, 1886	May 22, 1886	300	155.80	455.60
1st	787	Barnard White	"	Jan. 9, 1886	May 27, 1886	300		
1st	828	Ambroae Greenwell	"	Feb. 24, 1886	May 13, 1886	300		300.00
1st	875	William Stampson	"	May 26, 1886	June 5, 1886	300	33.20	333.20
1st	809	George C. Wood	Polygamy Unlawful Cohabitation.	May 17, 1886	May 29, 1886	500		
2d	319	Peter Wemmer	"	Mar. 11, 1885	May 27, 1886	300	191.10	
2d	321	William Bickley	"	May 9, 1885	"	300	185.15	
2d	379	M. L. Sheppard	"	May 10, 1886	"	300	149.45	444.96
2d	380	W. J. Cox	"	May 11, 1886	"	300	24.65	
3d	164	Royal B. Young	"	Feb. 10, 1885	June 1, 1886	300	108.60	406.30
3d	193	Abraham H. Cannon	"	Apr. 10, 1885	Mar. 17, 1886	300	56.10	342.10
3d	205	Samuel Smith	"	May 19, 1885	Feb. 20, 1886	300	111.30	401.00
3d	213	Joseph McMarrin	"	June 26, 1885	Feb. 23, 1886	300	84.25	

## CONVICTIONS FOR POLYGAMY IN THE TERRITORY OF UTAH, (Continued.)

District.	Court Docket No.	Against whom or what.	Form and cause of action.	When commenced.	Judgment or Decree.			Amount collected.
					Date.	Principal.	Cost.	
8d	225	William H. Lee	Unlawful Cohabitation.	Sep. 16, 1885	Feb. 26, 1886	\$ 300	\$217.05	.....
3d	226	John Brown	"	" "	Feb. 17, 1886	300	160.75	.....
3d	227	Hugh S. Gowans	"	" "	Feb. 26, 1886	300	220.05	.....
3d	229	Robert Morris	"	Sep. 26, 1885	Feb. 15, 1886	150	45.40	\$195.00
3d	230	William W. Willey	"	" "	Feb. 10, 1886	200	96.10	.....
3d	231	Thomas Birmingham	"	" "	Feb. 17, 1886	200	128.45	.....
3d	82	O. F. Due	"	Oct. 15, 1883	Mar. 1, 1886	300	165.70	.....
3d	248	John Penman	Polygamy	Oct. 16, 1885	Feb. 11, 1886	25	138.75	.....
3d	257	Joseph Sessions	Unlawful Cohabitation.	Nov. 6, 1885	Feb. 18, 1886	200	85.70	.....
3d	262	H. J. Foulger	"	" "	Feb. 26, 1886	300	93.65	393.65
3d	263	John P. Ball	"	Nov. 10, 1885	Feb. 27, 1886	300	104.00	.....
3d	264	Thomas Jones	"	" "	" "	300	87.40	.....
3d	269	John J. Smith	"	Nov. 16, 1885	" "	300	87.40	.....
3d	271	James Moyle	"	" "	Mar. 1, 1886	300	86.80	386.00
3d	286	George H. Taylor	"	Nov. 23, 1885	" "	300	89.00	378.85
3d	1	John W. Snell	"	Jan. 23, 1886	Mar. 9, 1886	300	120.50	.....
3d	4	Samuel F. Ball	"	" "	Mar. 1, 1886	300	83.35	.....
3d	9	Fred. A. Cooper	"	" "	Mar. 8, 1886	300	90.10	.....
3d	11	Hiram Goff	"	" "	Mar. 3, 1886	300	93.45	393.45
3d	14	William J. Jenkins	"	" "	" "	300	97.85	.....
3d	20	James P. Poulson	"	" "	Mar. 1, 1886	300	88.45	.....
3d	36	Robert McKindricks	"	" "	Mar. 18, 1886	300	67.75	.....
3d	42	Jonathan Chatterton	"	Jan. 30, 1886	Feb. 8, 1886	150	52.25	.....
3d	48	George C. Lambert	"	Mar. 15, 1886	May 11, 1886	300	98.50	.....
3d	51	Henry W. Naisbitt	"	Mar. 20, 1886	Apr. 30, 1886	300	158.42	.....
3d	54	Stanley Taylor	"	Mar. 26, 1886	May 10, 1886	300	89.45	.....
3d	68	George Wood	"	Apr. 1, 1886	June 2, 1886	300	99.70	.....
3d	75	Royal B. Young	"	Apr. 19, 1886	June 1, 1886	600	107.75	306.30
3d	79	George B. Bailey	"	" "	May 10, 1886	300	98.31	.....
3d	80	Ludwig Bang	"	" "	June 1, 1886	300	52.60	.....
3d	81	Andrew Jensen	"	" "	May 10, 1886	300	95.90	.....
3d	82	Jens Hansen	"	" "	June 1, 1886	300	90.00	.....
3d	85	Charles Denney	"	Apr. 23, 1886	" "	300	60.80	360.80
3d	86	John Bergen	"	" "	Apr. 26, 1886	1,200	144.70	.....
3d	94	W. W. Galbraith	"	June 5, 1886	Sep. 22, 1886	300	52.55	353.75
2d	326	William Robinson	Polygamy and Unlawful Cohabitation.	May 7, 1885	Sep. 15, 1886	300	.....	.....
2d	358	R. H. Sudweeks	Unlawful Cohabitation.	Dec. 19, 1885	" "	300	.....	.....
2d	381	George Hales	"	May 11, 1886	" "	300	.....	.....
2d	389	Thomas Scofield	"	Sep. 7, 1886	" "	300	.....	.....
2d	391	James Farrer	"	Sep. 13, 1886	" "	300	.....	.....
2d	394	R. H. Sudweeks	"	Sep. 16, 1886	" "	300	.....	.....
2d	398	Joseph H. Thurber	Polygamy and Unlawful Cohabitation.	Dec. 7, 1886	Dec. 27, 1886	300	.....	.....
2d	399	" "	Unlawful Cohabitation.	" "	" "	300	.....	.....
2d	402	John P. Jones	"	Dec. 11, 1886	" "	200	.....	.....
2d	405	John S. Jones	"	Dec. 14, 1886	" "	200	.....	.....
1st	58	James Lovelless	"	Oct. 28, 1885	Oct. 21, 1886	300	97.40	397.40
1st	59	Hans Jensen	"	" "	" "	100	.....	100.00
1st	93	Robert C. Kirkwood	"	Mar. 20, 1886	Nov. 13, 1886	300	.....	300.00
1st	103	John Durant	"	Oct. 1, 1886	Oct. 21, 1886	100	.....	100.00
1st	768	Timothy Parkinson	"	Dec. 21, 1885	Nov. 23, 1886	100	.....	100.00
1st	822	Myron W. Butler	"	Feb. 18, 1886	Dec. 1, 1886	100	.....	100.00
1st	831	Joseph Parry	"	Feb. 24, 1886	Jan. 8, 1887	300	.....	300.00
1st	837	John Stoddard	"	Feb. 26, 1886	Nov. 29, 1886	300	.....	.....
1st	900	James May	"	June 24, 1886	Dec. 13, 1886	100	.....	100.00
1st	935	George Chandler	"	June 27, 1886	Dec. 7, 1886	100	.....	.....
1st	939	L. D. Wilson	"	July 27, 1886	Dec. 13, 1886	100	.....	.....
1st	928	William Geddes	"	" "	Dec. 6, 1886	100	.....	100.00
1st	975	Thomas B. Helm	"	Dec. 8, 1886	Dec. 13, 1886	100	.....	.....
1st	976	Abraham Chadwick	"	Dec. 8, 1886	Jan. 8, 1887	300	.....	.....
1st	984	William E. Bassett	Polygamy.	Nov. 20, 1886	Jan. 6, 1887	500	.....	.....
1st	1007	Harvey Murdock	"	Nov. 23, 1886	Jan. 3, 1887	500	.....	.....
1st	10.9	Peter Peterson	Unlawful Cohabitation.	Dec. 20, 1886	Dec. 30, 1886	100	.....	100.00
1st	1011	N. C. Mortensen	"	Dec. 16, 1886	Jan. 8, 1887	300	.....	300.00
1st	1018	H. B. Gwilliam	"	Nov. 20, 1886	Dec. 13, 1886	300	.....	.....
1st	1023	Hugh Adams	"	Dec. 30, 1886	Jan. 3, 1887	100	.....	100.00
1st	1025	Charles Franks	"	Dec. 20, 1886	Jan. 8, 1887	100	.....	100.00
1st	1031	Thomas Kirby	"	Jan. 5, 1887	" "	100	.....	.....
1st	1032	Robert Henderson	"	" "	Jan. 3, 1887	100	.....	100.00
1st	1034	William Palmer	"	Dec. 3, 1886	" "	100	.....	100.00
1st	1036	Thomas McNeal	"	Dec. 20, 1886	" "	100	.....	100.00
1st	1041	James W. Burton	"	" "	" "	100	.....	.....
1st	1074	Peter Anderson	"	Dec. 23, 1886	Jan. 8, 1887	100	41.05	.....
8d	177	George Dunford	"	Dec. 16, 1886	Jan. 3, 1887	400	.....	100.00
8d	195	George Naylor	"	Mar. 24, 1885	Nov. 24, 1886	150	28.45	176.35
				Apr. 9, 1885	Dec. 3, 1886	300	57.30	334.30



*John Squires*

*Aged 70*



CONVICTIONS FOR POLYGAMY IN THE TERRITORY OF UTAH, (Continued.)

District.	Court Docket No.	Against whom or what.	Form and cause of action.	When commenced.	Judgment or Decree.			Amount collected.
					Date.	Princpal.	Cost.	
3d	233	Thomas F. H. Morton	Unlawful Cohabitation.	Sep. 26, 1885	Oct. 1, 1886	\$300	\$ 41.80	\$331.75
3d	67	Joseph H. Dean	"	Apr. 1, 1885	Sep. 27, 1886	300	162.10	.....
3d	88	Orson P. Arnold	"	May 11, 1886	Oct. 21, 1886	450	101.80	250.30
3d	90	Willard L. Snow	"	June 4, 1886	Oct. 1, 1886	300	47.70	146.25
3d	91	William Jeffs	"	" "	Sep. 22, 1886	400	60.80	160.00
3d	89	Hiram P. Folsom	"	" "	Sep. 25, 1886	300	51.10	332.10
3d	93	David W. Leaks	"	June 5, 1886	Oct. 6, 1886	300	86.85	.....
3d	96	William Felstead	Polygamy and Unlawful Cohabitation.	Aug. 4, 1886	Sep. 14, 1886	300	39.55	.....
3d	97	Carl Jensen	Unlawful Cohabitation.	" "	Sep. 30, 1886	300	91.35	190.35
3d	98	Richard Warburton	"	" "	Sep. 20, 1886	300	100.75	.....
3d	99	James Deener	"	" "	Sep. 23, 1886	300	95.20	.....
3d	101	James Higgins	"	" "	Sep. 30, 1886	400	99.20	197.75
3d	102	Jonas Lindburg	"	" "	Sep. 20, 1886	300	89.95	89.95
3d	107	Andrew Haesen	"	Aug. 7, 1886	Sep. 27, 1886	300	97.40	.....
3d	120	Isaac Pierce	"	Aug. 13, 1886	Oct. 9, 1886	100	45.90	144.90
3d	113	John Gillespie	"	" "	Sep. 30, 1886	300	154.15	.....
3d	143	H. H. Hawthorne	"	Oct. 28, 1886	Nov. 23, 1886	100	103.20	.....
3d	138	John B. Furster	"	Sep. 24, 1886	Oct. 1, 1886	300	44.70	.....
3d	142	John I. Sterle	"	Sep. 30, 1886	Oct. 14, 1886	600	107.75	.....
3d	146	John C. Gray	"	Oct. 28, 1886	Oct. 30, 1886	50	34.90	79.10
3d	153	Lorenzo Stutz	"	Nov. 24, 1886	Nov. 29, 1886	1 0	60.50	.....
3d	159	Thomas Allsop	"	Nov. 29, 1886	Dec. 14, 1886	50	53.15	102.65
3d	186	Harrison Sperry	"	Feb. 23, 1887	Feb. 28, 1887	300	22.50	315.50
3d	124	Amos H. Naff	"	Aug. 13, 1886	Oct. 11, 1886	300	185.20	485.20
3d	33	Ishmael Phillips	"	Jan. 23, 1886	Feb. 14, 1887	3 0	94.55	.....
3d	256	Henry Grow	"	Nov. 6, 1885	Mar. 19, 1887	50	117.10	157.10
3d	119	William J. Hooper	"	Aug. 13, 1886	Feb. 23, 1887	300	26.80	.....
3d	123	Joseph Blunt	"	" "	Feb. 21, 1887	300	31.70	.....
3d	125	Herman Thorup	"	Sep. 20, 1886	Mar. 14, 1887	25	41.65	66.40
3d	126	Rasmus Nielson	"	" "	Feb. 19, 1887	300	86.60	.....
3d	127	Henry Reiser	"	" "	Feb. 14, 1887	300	38.10	331.00
3d	128	Isaac Brockbank	"	" "	Feb. 15, 1887	300	22.05	314.95
3d	129	William Foster	"	" "	Feb. 21, 1887	300	41.90	333.65
3d	133	Bedson Eardley	"	" "	" "	3 0	37.60	334.60
3d	134	William Watson	"	Sep. 26, 1886	" "	300	36.60	.....
3d	135	Ezra Clark	"	" "	" "	300	117.20	407.20
3d	144	Peter Barkdull	"	Sep. 29, 1886	" "	300	53.50	.....
3d	144	Lewis H. Mousley	"	Oct. 26, 1886	Feb. 19, 1887	300	51.55	348.55
3d	145	Herman Grether	"	Oct. 28, 1886	Feb. 21, 1887	300	28.20	.....
3d	151	John P. Mortensen	"	" "	Feb. 19, 1887	300	67.40	324.65
3d	155	John Adams	"	Nov. 24, 1886	Feb. 21, 1887	300	92.80	.....
3d	158	Apollos Driggs	"	Nov. 28, 1886	Feb. 19, 1887	300	76.25	373.25
3d	160	Matthias Pickett	"	Nov. 29, 1886	Feb. 23, 1887	300	85.80	.....
3d	162	George Crismon	"	" "	Mar. 7, 1887	150	22.00	170.50
3d	163	A. W. Cooley	"	" "	Mar. 1, 1887	25	34.55	59.30
3d	164	Joseph Hogan	"	" "	Feb. 21, 1887	300	52.30	349.30
3d	166	Thomas Butler	"	" "	Feb. 28, 1887	300	186.15	.....
3d	167	Edward Schwenfeld	"	" "	Mar. 1, 1887	50	47.70	92.80
3d	169	Andrew Winberg	"	Dec. 1, 1886	Feb. 28, 1887	300	108.40	.....
3d	171	William H. Tovey	"	" "	Mar. 1, 1887	25	68.45	93.20
3d	174	John England	"	Feb. 14, 1887	Mar. 19, 1887	150	107.10	.....
3d	175	Henry Whittaker	"	" "	" "	300	52.90	.....
3d	178	Hvrum North	"	" "	Feb. 24, 1887	300	31.00	.....
3d	179	Levi North	"	" "	Feb. 23, 1887	300	30.75	.....
3d	184	Thomas H. Morrison	"	Feb. 23, 1887	Mar. 1, 1887	25	30.15	55.15
2d	413	James Dally	"	Mar. 15, 1887	Mar. 21, 1887	300	.....	.....
2d	414	William Dally	"	Mar. 16, 1887	" "	300	.....	.....
2d	418	William Unthank	"	Mar. 18, 1887	" "	300	.....	.....
1st	117	John P. Kelly	"	Oct. 6, 1886	Apr. 23, 1887	75	.....	75.00
1st	120	George D. Snell	"	Oct. 7, 1886	Apr. 12, 1887	200	50 00	250.00
1st	126	David John	"	Oct. 20, 1886	Mar. 7, 1887	3 0	74.00	374 00
1st	147	Edwin Standing	"	Mar. 2, 1887	Apr. 12, 1887	200	.....	200.00
1st	149	John Gibbs	"	Mar. 3, 1887	" "	100	.....	100.00
1st	150	James Kirkham	"	" "	Mar. 21, 1887	50	.....	50.00
1st	152	George Kirkham	"	" "	" "	50	.....	50.00
1st	173	William Harrison	"	Mar. 11, 1887	" "	100	.....	1 0 00
1st	175	George I. Pray	"	" "	Apr. 30, 1887	100	75 00	175 00
1st	176	Albert Singleton	"	" "	Mar. 31, 1887	300	64.40	364.40
1st	181	Lucius Whiting	"	Mar. 17, 1887	Apr. 12, 1887	50	.....	50.00
1st	182	J. T. Arrowsmith	"	" "	" "	100	.....	100.00
1st	183	Carlos Snow	"	Mar. 18, 1887	" "	50	.....	50.00
1st	184	Sanford Fuller	"	" "	" "	100	.....	10 0 00
1st	188	James Smith	"	Mar. 19, 1887	Apr. 30, 1887	300	.....	.....
1st	108	William Webb	"	Sep. 27, 1886	Mar. 7, 1887	300	.....	.....
1st	938	Frederick W. Ellis	"	July 27, 1886	Dec. 13, 1887	100	.....	100.00
1st	1043	John Marlrott	"	Nov. 30, 1886	Jan. 8, 1887	100	.....	100.00
1st	1124	John S. Houtz	"	May 21, 1887	May 27, 1887	100	65.05	165.65
2d	419	Alexander Orton	"	May 4, 1887	May 24, 1887	100	.....	.....
2d	420	Joseph P. Barton	"	" "	" "	300	.....	.....

CONVICTIONS FOR POLYGAMY IN THE TERRITORY OF UTAH, (Continued.)

District.	Court docket No.	Against whom or what.	Form and cause of action.	When commenced.	Judgment or decree.			Amount collected.
					Date.	Principal.	Cost.	
2d	421	William Jones	Unlawful Cohabitation.	May 4, 1887	May 24, 1887	\$ 300		
2d	423	Samuel Worthen	"	May 6, 1887	" "	300		
3d	225	George Wardell	"	June 14, 1887	June 20, 1887	50	\$ 63.90	\$109.00
3d	232	James P. Kelly	Fornication.	" "	July 11, 1887	25	13 30	35.00
3d	232	Theresa M. Pierson	"	" "	June 18, 1887	15	19.75	30.50
1st	1019	Willard Bingham	Unlawful Cohabitation.	Jan. 5, 1887	May 28, 1887		64.15	64.15
3d	182	Richard Collett	"	Feb. 12, 1887	Apr. 30, 1887	100	42 35	112.60
3d	184	Alexander Edwards	"	" "	" "	100	57 55	156.75
3d	206	Solomon Wixon	"	Apr. 23, 1887	Apr. 29, 1887	30	45 50	
1st	1054	Jens Peter Jensen	"	Nov. 30, 1886	June 4, 1887	200		
1st	1079	William Buttr	"	Dec. 23, 1886	June 21, 1887	300		
1st	1035	Alvin Crockett	"	Jan. 15, 1887	June 4, 1887	300		
1st	1120	Daniel Ransom	"	May 16, 1887	May 20, 1887	100	60.20	160.20
1st	1121	J. P. Winter	"	May 23, 1887	May 21, 1887	300		
1st	1122	Peter Madsen	"	May 21, 1887	" "	100	61.20	161.20
1st	1123	Allen Hunsaker	"	" "	May 26, 1887	200	68.55	268.55
1st	1125	Hans Peterson	"	May 18, 1887	June 21, 1887	200		
1st	1140	Levi J. Taylor	"	May 21, 1887	May 28, 1887	100	42.30	142.30
1st	1172	Lars C. Peterson	"	May 24, 1887	June 21, 1887	50	41 35	91.35
1st	1174	William Douglas	"	" "	" "	100	49 25	149.25
1st	1185	Elisha Campbell	"	May 20, 1887	" "	50	43.10	93.10
1st	1198	Samuel Carter	"	May 8, 1887	" "	100	56 60	156.60
1st	1199	John J. Dunn	"	May 21, 1887	" "	100		
1st	1200	Loren Nielson	"	May 23, 1887	" "	100	30.70	130.70
1st	1201	Thomas Harris	"	May 24, 1887	May 24, 1887	100	51.55	
1st	1202	Caute Emertson	"	May 23, 1887	June 21, 1887	200		
1st	1204	Hans Hexted	"	May 16, 1887	May 28, 1887	100		
1st	1205	Jens Frandsen	"	May 23, 1887	June 21, 1887	100		
1st	1208	Albert G. Slater	"	May 21, 1887	" "	50		
1st	1234	Hans Jensen	"	May 28, 1887	" "	100		
1st	1237	Gustav Anderson	"	" "	" "	100		100.00
1st	1092	Jos. Wadsworth	"	Jan. 8, 1887	May 28, 1887		44.60	44.60
1st	1107	Ralph Douglas	"	May 21, 1887	" "		48.80	48.80
1st	246	William G. Baker	"	Sep. 28, 1887	Oct. 14, 1887	175	77.00	252.00
3d	210	Henry Beckstead	"	Apr. 23, 1887	Sep. 26, 1887	100	66.10	171.30
3d	205	Ebenezer Woodford	"	" "	Sep. 27, 1887	150	32.15	186.90
3d	208	John Connelly	"	" "	Sep. 14, 1887	200	44.60	247.95
3d	231	Sarah Carner	Fornication.	June 14, 1887	Sep. 23, 1887	25	17.75	42.95
3d	214	Miles L. Williams	Unlawful Cohabitation.	" "	Oct. 11, 1887	50	75.30	125.30
3d	110	John Tate	"	Aug. 7, 1886	Sep. 29, 1887	50	86.75	136.75
3d	258	Peregrine Sessions	"	Sep. 30, 1887	Oct. 24, 1887	150	48 50	198.50
1st	297	James Hansen	"	Oct. 3, 1887	Oct. 11, 1887	75		75 00
1st	225	Christian Anderson	"	Sep. 21, 1887	Nov. 9, 1887	25		25.00
3d	245	Thomas Labrum	"	Sep. 24, 1887	Oct. 5, 1887	25	30.75	55.75
3d	247	John Oborn	"	" "	" "	50	59.20	109.20
3d	194	William Blood	"	Mar. 5, 1887	Sep. 20, 1887	150	33.40	189.00
3d	188	Edwin Rushton	"	Mar. 1, 1887	Oct. 3, 1887	50	48.30	98.30
1st	1096	William L. Walters	"	Jan. 15, 1887	June 6, 1887	300		
1st	1207	Peter J. Lammers	"	May 6, 1887	June 21, 1887	100		
1st	1195	Ole Hansen	"	May 28, 1887	Nov. 19, 1887	100		
1st	1265	Christian Peterson	"	June 10, 1887	Oct. 25, 1887	300		
1st	1060	A. E. Berline	"	Oct. 12, 1886	" "	300		
1st	1060	Christian Hansen	"	Dec. 8, 1886	Oct. 27, 1887	300		
1st	1016	Richard Fry	"	Nov. 30, 1886	Nov. 19, 1887	300	73.20	373.20
1st	923	Andrew Stromberg	"	July 27, 1886	Oct. 27, 1887	100		
1st	1278	John Jenkins	"	June 10, 1887	Nov. 19, 1887	300	40.85	340.85
1st	1280	Isaac Farley	"	" "	Nov. 9, 1887	300		
2d	328	Isaac Riddle	"	May 16, 1885	Sep. 20, 1887	300	441.69	741.69
2d	427	William Lefever	"	Sep. 7, 1887	" "	100		100.00
2d	437	Levi Savage	"	Sep. 10, 1887	" "	300		
3d	249	John Pennan	"	Oct. 16, 1885	Oct. 12, 1887	25		
3d	18	Charles Livingston	"	Jan. 13, 1886	Oct. 14, 1887	100		
3d	65	Joseph H. Ridges	"	Mar. 31, 1886	Sep. 26, 1887	25		
3d	157	John P. Wright	"	Nov. 24, 1886	Sep. 30, 1887	50		
3d	180	James Woods	"	Feb. 17, 1887	Sep. 19, 1887	100		
3d	185	Charles Burgess	"	Feb. 23, 1887	Oct. 11, 1887	25	44. 5	69.15
3d	187	Hyrum Evans	"	Mar. 1, 1887	Oct. 3, 1887	50	46.00	96.00
3d	189	J. C. Watson	"	" "	Nov. 11, 1887	300	60.50	360.50
3d	199	Samuel M. Butcher	"	" "	Nov. 26, 1887	50	25.45	75 45
3d	200	Alex. Bills	"	" "	Sep. 30, 1887	100	49.90	149.90
3d	197	Samuel Anderson	"	Apr. 23, 1887	Oct. 12, 1887	50		
3d	198	Frederick Peterson	"	" "	Oct. 4, 1887	100		
3d	209	William S. Muir	"	" "	Oct. 12, 1887	100		
3d	212	John Gerber	"	Apr. 27, 1887	Oct. 11, 1887	100		
3d	223	James Welsh	"	June 14, 1887	Oct. 15, 1887	50		
3d	213	Thomas H. Smart	"	" "	Sep. 19, 1887	300		
3d	218	James M. Fisher	"	" "	Sep. 29, 1887	100	77 55	177 55
3d	219	Andrew Homer	"	" "	Oct. 14, 1887	50	116.35	166 35
3d	220	John Cottam	"	" "	Sep. 29, 1887	50		20.00
3d	221	George Wilding	"	" "	Sep. 21, 1887	100		



CONVICTIONS FOR POLYGAMY IN THE TERRITORY OF UTAH. (Continued.)

District.	Court Docket No.	Against whom or what.	Form and cause of action.	When commenced.	Judgment or Decree.			Amount collected.
					Date.	Principl.	Cost.	
3d	222	Rodney C. Badger	Unlawful Cohabitation.	June 14, 1887	Nov. 21, 1887	\$100	\$ 70.20	\$170.20
3d	226	John A. Marchant	"	" "	Sep. 30, 1887	100	63.10	163.10
3d	215	Joseph C. Parry	"	" "	" "	50		
3d	216	George Harmon	"	" "	Sep. 14, 1887	100		
3d	240	David B. Lybee	"	Sep. 24, 1887	Oct. 25, 1887	50		
3d	246	Daniel Harney	"	" "	Sep. 29, 1887	50		
3d	249	Thomas Henderson	"	" "	Nov. 14, 1887	100		
3d	251	James Loyuel	"	" "	Oct. 12, 1887	50	35.50	85.50
3d	254	Nathan Hansen	"	" "	" "	100	49.10	149.10
3d	255	Byron W. King	"	" "	Oct. 22, 1887	50		
3d	239	Jesse Turpin	"	" "	Oct. 14, 1887	100		
1st	1045	John Martin	"	Jan. 8, 1886	Nov. 21, 1887	100		100.00
1st	1161	Mary J. Whitely	Fornication.	May 28, 1887	Dec. 16, 1887	15		15.00
1st	1369	M. C. Jensen	Unlawful Cohabitation.	Dec. 1, 1887	Dec. 17, 1887	100		100.00
1st	1377	Hans N. Peterson	"	Dec. 7, 1887	" "	100		100.00
1st	1421	H. D. Pierson	"	Dec. 9, 1887	" "		39.60	39.60
1st	169	Isaac Bullock	"	Mar. 2, 1887	Nov. 12, 1887	300	72.00	372.00
1st	178	William Wadley	"	Mar. 11, 1887	Nov. 7, 1887	200		200.00
1st	223	John T. Lambert	"	Oct. 3, 1887	Oct. 13, 1887		44.20	44.20
1st	242	Peter M. Peterson	"	" "	Oct. 24, 1887		55.70	55.70
1st	331	Henry Beal	"	Oct. 24, 1887	" "	300		300.00
3d	243	Walter C. Brown	"	Sep. 24, 1887	Dec. 24, 1887	50	38.55	88.55
1st	165	William Yates	"	Mar. 17, 1887	Oct. 13, 1887	50		50.00
1st	177	Orlando Herrin	"	Mar. 11, 1887	Oct. 27, 1887	50		50.00
1st	179	Victor Sandgreen	"	" "	Oct. 13, 1887	100		100.00
1st	190	Lars Jacobsen	"	Mar. 19, 1887	" "	50		50.00
1st	217	Charles McCarty	"	Sep. 24, 1887	" "	200		
1st	219	John Harris	"	Sep. 21, 1887	Nov. 17, 1887	50		
1st	240	Niels P. Madsen	"	Oct. 3, 1887	Oct. 13, 1887	200		
1st	243	Edward Clift	"	" "	" "	200		
1st	326	Ferd. Oberhanslix	"	Oct. 24, 1887	Oct. 26, 1887	50	54.20	104.20
1st	328	German Ellsworth	"	" "	Nov. 17, 1887	100		100.00
2d	431	Stephen S. Barton	"	Sep. 6, 1887	Dec. 22, 1887	300		
2d	439	David Chidester	"	Dec. 6, 1887	" "	300		
2d	440	Elijah M. Steers	"	" "	" "	300		
2d	443	Daniel S. McFarlane	"	Dec. 7, 1887	" "	300		
2d	444	George Holyoak	"	" "	" "	300		
3d	195	Frank Engler	Fornication.	Apr. 23, 1887	Feb. 15, 1888	25	21.90	49.90
3d	244	John Weinel	Unlawful Cohabitation.	Sep. 24, 1887	Feb. 16, 1888	200	34.90	234.90
3d	262	Joseph Dover	"	Feb. 10, 1888	Feb. 11, 1888	50	30.00	80.00
1st	1509	Gohard Jensen	"	Dec. 21, 1887	Dec. 22, 1887	50		50.00
3d	241	C. H. Bassett	"	Sep. 24, 1887	Mar. 5, 1888	50	42.40	92.40
3d	275	Ephraim Snyder	"	Feb. 21, 1888	Feb. 29, 1888	50	20.00	70.00
1st	200	Aaron Hardy	"	Oct. 3, 1887	Oct. 3, 1887		42.85	42.85
1st	307	Elmer Taylor	"	Oct. 1, 1887	Mar. 5, 1888	300	45.60	345.00
1st	356	John Williams	"	Feb. 29, 1888	" "	100		100.00
1st	1383	Ferdinand F. Hansen	"	Dec. 1, 1887	Dec. 22, 1887	100		100.00
3d	273	James S. Brown	"	Feb. 2, 1888	Mar. 12, 1888	100	25.35	125.35
1st	211	Karl G. Maeser	"	Mar. 5, 1888	Mar. 24, 1888	300	32.95	332.95
1st	241	George Farnsworth	"	Oct. 3, 1887	" "	200		200.00
1st	271	John Warwood	"	Sep. 24, 1887	Nov. 3, 1887		54.15	54.15
1st	296	Frederick Wright	"	Oct. 3, 1887	Mar. 24, 1888	100		10.00
1st	335	George Storrs	"	Oct. 24, 1887	" "	100	41.85	141.85
2d	139	B. H. Schettler	"	Sep. 24, 1886	Feb. 29, 1888	300	102.70	402.70
2d	456	Hiram S. Church	"	Mar. 8, 1888	Mar. 24, 1888	300		
2d	457	Wm. A. Bringhurst	"	" "	" "	300		
2d	458	Marcus Funk	"	Mar. 10, 1888	" "	300		
2d	459	Francis Higgins	"	" "	" "	300		
2d	480	John Tanner	"	" "	" "	300		
3d	248	Claus Johnson	"	Sep. 24, 1887	Feb. 29, 1888	50		
3d	251	William R. Smith	"	" "	Mar. 31, 1888	300	92.50	392.50
3d	257	Thomas Alsop	"	Sep. 30, 1887	Mar. 12, 1888	50	36.30	86.30
3d	264	Ephraim Briggs	"	Feb. 10, 1888	Mar. 15, 1888	25	39.90	64.90
3d	269	John Johnson	"	Feb. 21, 1888	Feb. 24, 1888	50		
3d	271	Edward Cox	"	" "	Feb. 27, 1888	50	31.40	81.40
1st	764	Henry Hughes	"	Dec. 21, 1887	" "	100		100.00
1st	1470	William Willis	"	Nov. 26, 1887	Dec. 10, 1887	150		150.00
3d	191	William Brown	"	Mar. 5, 1887	Apr. 19, 1888	300	77.50	377.50
1st	286	John Frantzen	"	Sep. 28, 1887	Apr. 14, 1888	200	38.15	238.15
1st	315	John Christiansen	"	Oct. 12, 1887	" "	75		75.00
1st	405	William H. Warner	"	Mar. 7, 1888	" "	300	28.30	328.30
1st	1167	Rudolph Hochstrassen	"	May 21, 1887	Nov. 22, 1887	100	50.30	150.30
1st	1402	Andrew Madsen	"	Nov. 28, 1887	Dec. 17, 1887	100		100.00
3d	192	John R. Barnes	"	Mar. 5, 1887	Apr. 30, 1888	300	137.05	437.05
1st	1385	William L. Watkins	"	Dec. 1, 1887	May 7, 1888	300	26.50	326.50
1st	1373	Lars C. Larsen	"	" "	Dec. 14, 1887	50		50.00
1st	229	William T. Reid	"	Sep. 30, 1887	Mar. 10, 1888	300	75.40	375.40
1st	380	Soren N. Sorensen	"	Feb. 19, 1888	Feb. 23, 1888	50	65.85	115.85
1st	1055	James Hansen	"	Nov. 30, 1886	Feb. 30, 1888	100		
1st	1165	Frederick Jensen	"	May 28, 1887	Nov. 29, 1885	100		

CONVICTIONS FOR POLYGAMY IN THE TERRITORY OF UTAH, (Continued.)

District.	Court Docket No.	Against whom or what.	Form and cause of action.	When commenced.	Judgment or Decree.			Amount col-lected.
					Date.	Princi-pal.	Cost.	
1st	1171	Ralph Smith	Unlawful Cohabitation.	May 28, 1887	Nov. 21, 1887	\$100		
1st	1176	William Williams	"	June 6, 1887	Feb. 13, 1888	100		
1st	1194	Jens Hansen	"	May 28, 1887	"	100		
1st	1233	William Griffin	Polygamy	June 10, 1887	"	300		
1st	1282	James Christensen	Unlawful Cohabitation.	"	Dec. 8, 1887	300		
1st	1285	Peter S. Barten	"	"	Nov. 21, 1887	100		
1st	1290	Hans P. Hansen	"	"	Feb. 13, 1888	200	\$ 40.00	\$240.00
1st	1297	Ira Allen	"	"	"	300	65.00	765.00
1st	1335	James A. Taylor	"	Nov. 24, 1887	Dec. 5, 1887	150		
1st	1338	Thomas Young	"	Dec. 1, 1887	Dec. 9, 1887	150		
1st	1370	C. M. Borgstrom	"	Nov. 28, 1887	Feb. 13, 1888	100		
1st	1375	A. W. Stratford	"	Dec. 1, 1887	Dec. 8, 1887	100		
1st	1082	John L. Jones	"	May 21, 1887	Dec. 10, 1887	150		
1st	1117	Jens Peterson	"	May 28, 1887	"	300		
1st	1386	Lars Mortensen	"	Dec. 2, 1887	Dec. 9, 1887	50		
1st	1397	M. P. Mortensen	"	Nov. 23, 1887	Dec. 14, 1887	100		
1st	1417	Wm. Chugg	"	Nov. 28, 1887	Dec. 17, 1887	200		
1st	1424	Gustav Thomasson	"	"	"	100		
1st	1433	Peter Reuson	"	"	Dec. 23, 1887	100		100.00
1st	1436	Charles O. Dnnn	"	"	Dec. 10, 1887	150		
1st	1196	John Felt	"	May 21, 1887	May 19, 1887	50	60.00	110.00
1st	1095	Alvin Crockett	"	Jan. 15, 1887	Nov. 1, 1887			41.95
1st	1435	M. W. Merrill	"	Nov. 23, 1887	"			46.40
1st	362	Christian L. Thorp	"	Feb. 29, 1888	Mar. 5, 1888	100	166.30	166.30
1st	1467	Charles Johns	"	Dec. 13, 1887	May 21, 1888	50	39.50	89.50
1st	1582	John G. Wilson	"	May 11, 1888	May 25, 1888	50	58.50	108.50
1st	1609	John Andrews	"	May 19, 1888	May 24, 1888	10	60.50	70.50
1st	1722	Lars Sorenson	"	May 17, 1888	"	10	49.00	59.05
1st	1640	Hans Olesou	"	May 22, 1888	May 23, 1888	50	42.00	94.00
1st	1654	Ole Olesou	"	May 12, 1888	May 24, 1888	10	49.00	59.00
1st	1662	James Mitchell	"	May 22, 1888	May 26, 1888	50	50.00	100.00
2d	470	W. Hardy	"	May 11, 1888	June 1, 1888	300		
2d	478	Walter Grauger	"	May 14, 1888	"	300		
2d	499	Casper Bryner	"	May 18, 1888	"	300		
2d	500	Jacob Bastian	"	May 19, 1888	"	300		
2d	501	William Cutler	"	"	"	300		
1st	830	W. R. Stowell	"	Feb. 6, 1888	June 30, 1888	200	33.40	233.40
1st	1203	C. F. Steady	"	May 24, 1887	June 23, 1888	300	150.50	450.50
1st	1379	James Ipsen	"	Dec. 1, 1887	May 31, 1888	50	49.00	99.00
1st	384	Charles Munk	"	Feb. 27, 1888	Apr. 14, 1888	100	54.00	154.00
1st	1572	Simon Webb	"	May 11, 1888	May 12, 1888	50	46.95	96.95
3d	261	John Squires	"	Feb. 10, 1888	May 31, 1888	300	124.30	424.30
1st	1399	Ulrich Stauffer	"	Dec. 5, 1887	"	300	49.30	49.30
1st	1641	E. R. Miles	"	May 12, 1888	May 12, 1888	50	41.30	91.30
1st	815	Winston Farr	"	Feb. 16, 1886	May 26, 1888	300		
1st	833	Daniel F. Thomas	"	Feb. 24, 1886	May 31, 1888	300	59.75	359.75
1st	899	Henry W. Manning	"	June 24, 1886	June 23, 1888	300	63.80	363.80
1st	929	Lorenzo Waldron	"	July 27, 1886	May 24, 1888	300		
1st	1068	Fraunlon Durfey	"	Nov. 20, 1886	Dec. 2, 1887	300		
1st	1081	Hans Funk	"	Dec. 23, 1886	Nov. 19, 1887	300		
1st	1283	Jens Christensen	"	June 10, 1887	May 26, 1888	50		
1st	1292	Frederick Yates	"	"	May 18, 1888	100		
1st	1295	Niels G. Anderson	"	"	May 28, 1888	100		
1st	1373	John Henry Rott	"	"	June 23, 1888	100		
1st	1468	Charles H. Munson	"	Dec. 13, 1887	"	200		
1st	1508	Axel Christensen	"	Dec. 20, 1887	"	100		
1st	1626	Alex Beard	"	May 11, 1888	"	50		
1st	1518	George Grahl	"	May 12, 1888	May 24, 1888	10		
1st	1627	Christ. F. Winge	"	May 17, 1888	May 25, 1888	50		
1st	1647	Thomas B. Helm	"	"	June 2, 1888	300		
1st	1712	James Rywater	"	May 23, 1888	May 28, 1888	50		
1st	1710	Thomas Harper	"	"	"	300		
1st	1544	Hans C. Hansen	"	"	June 23, 1888	100		
1st		George Jordine	"	"	June 2, 1888	300		
1st		Elijah Seaman	"	"	May 25, 1888	50		
1st	175	Carl C. N. Dorius	"	Sep. 29, 1887	Mar. 10, 1888	100	73.10	173.10
1st	220	Harvey C. Cluff	"	Oct. 24, 1887	Apr. 14, 1888	300		
1st	257	James Latimer	"	Sep. 24, 1887	Mar. 24, 1888	300		
1st	317	L. Loveridge	"	Oct. 24, 1887	Mar. 26, 1888	50		
1st	327	Henry Boyle	"	"	Mar. 24, 1888	100		
1st	329	Joseph S. Jones	"	"	Mar. 10, 1888	100	44.10	144.10
1st	336	John J. Walser	"	"	"	100	44.85	144.85
1st	226	Bent Larsen	"	Feb. 29, 1887	Mar. 16, 1888	50		
1st	212	Joseph Luneford	"	Mar. 5, 1887	Mar. 24, 1888	50		
1st	368	Henry Hamilton	"	Feb. 27, 1888	"	100		
1st	377	Levi Curtis	"	Feb. 29, 1888	"	100		
1st	396	Joshua Adams	"	Mar. 12, 1888	"	100		
1st	418	Moroni Albred	"	Mar. 5, 1888	Mar. 6, 1888	100	53.25	153.25
1st	153	Thomas R. Cutler	"	"	Mar. 24, 1888	300	44.20	144.20
1st	95	Thomas Purpont	"	June 5, 1886	Mar. 1, 1888	100		
1st	161	Daniel Jones	"	Nov. 29, 1886	Apr. 11, 1888	300		
1st	417	Sammal Albred	"	Mar. 5, 1888	Mar. 5, 1888	100		
3d	260	William H. Tovey	"	Feb. 10, 1888	Apr. 21, 1888	50	63.60	63.60
3d	272	George C. Watts	"	Feb. 21, 1888	"	50		
3d	283	William Jenkins	"	Feb. 24, 1888	"	50		



*Nathan J. Porter*



EXHIBIT B.

CONVICTIONS FOR POLYGAMY IN THE TERRITORY OF IDAHO.

District.	Court Docket No.	Against whom or what.	Form and cause of action.	When commenced.	Judgment or Decree.			Amount collected.
					Date.	Prin- cipal.	Cost.	
3d	.....	Samuel Humphrey	Unlawful Cohabitation.	Mar. 16, 1885	May, 1885	\$500	.....	.....
3d	.....	Hezekiah Duffin	"	Oct. 1885	May, 24, 1886	300	.....	\$300.00
3d	.....	Thomas Wilde	"	Apr. 23, 1886	"	300	.....	.....
3d	.....	Joseph Lewis	"	"	"	300	.....	.....
3d	.....	Jens Jorgensen	"	"	"	300	.....	.....
3d	.....	Rasmus Nelson	"	"	"	300	.....	.....
3d	.....	William Handy	"	"	"	300	.....	.....
3d	.....	Hans Rasmussen	"	"	"	300	.....	.....
3d	.....	Rasmus Peterson	"	Apr. 30, 1886	"	300	.....	300.00
3d	.....	H. C. Pender	Polygamy. Unlawful Cohabitation.	May 1, 1886	"	300	.....	.....
3d	.....	John Jolly	"	"	"	300	.....	.....
3d	.....	David Jensen	"	"	"	300	.....	.....
3d	.....	Chris. Gardiner	"	"	"	300	.....	.....
3d	.....	John J. Williams	"	"	"	300	.....	.....
3d	.....	George H. Whipple	"	Sep. 1885	"	300	.....	300.00
3d	.....	John Craner	"	"	"	300	.....	.....
3d	.....	Nels Graham	"	May 4, 1886	"	300	.....	.....
3d	.....	Charles S. Wright	"	"	"	150	.....	.....
3d	.....	Andrew Jacobsen	"	"	"	300	.....	.....
3d	.....	Joseph Phelps	"	Oct., 1885	Oct., 1885	300	\$101.10	401 10
3d	.....	Joseph Harris	"	Apr., 1886	May, 1886	300	.....	.....
3d	.....	N. Porter	"	Oct., 1885	Oct., 1885	150	.....	.....
3d	.....	Arthur Peck	"	"	"	300	.....	.....
3d	.....	A. A. Bjorn	"	"	"	300	.....	.....
3d	.....	Wm. Garrison	"	"	"	150	.....	.....
3d	.....	O. B. Nash	"	"	"	150	.....	.....
3d	.....	A. L. Blackburn	"	"	"	300	.....	.....
3d	.....	Alex Latham	"	"	"	300	.....	.....
3d	.....	S. R. Parkinson	"	Oct., 1886	Nov. 11, 1886	300	.....	300.00
3d	.....	Milo Andrus	"	Apr. 30, 1886	Nov. 18, 1887	300	.....	390.00
3d	.....	Alexander N. Stevens	"	Nov. 3, 1887	"	300	.....	.....
3d	.....	A. T. Anderson	"	"	Nov. 28, 1887	300	.....	.....
3d	.....	Elijah Wilson	"	"	"	300	.....	.....
3d	.....	J. H. Denning	"	Nov. 4, 1887	"	300	.....	.....
3d	.....	William Woodward	"	"	"	300	.....	300.00
3d	.....	Robert Hall	"	June, 1888	June 18, 1888	50	.....	50.00
3d	.....	James P. Harrison	"	"	"	300	.....	.....
3d	.....	John Cozzens	"	"	"	300	.....	.....
3d	.....	Samuel Kuntze	"	"	"	300	.....	.....
3d	.....	William Henderson	"	Nov. 1, 1882	Oct., 1884	20	.....	.....
3d	.....	W. D. Hendricks	"	May, 1885	May, 1885	300	.....	.....
3d	.....	John D. Jones	"	Oct., 1884	"	300	.....	.....
3d	.....	William J. Pratt	"	May, 1885	"	300	.....	.....
3d	.....	John L. Roberts	"	"	"	300	.....	.....
3d	.....	George Stewart	"	"	"	300	.....	.....
3d	.....	E. Simpson	"	"	"	300	.....	.....
3d	.....	John Wain	"	"	"	200	.....	.....
3d	.....	Samuel Hall	"	June, 1888	June, 1888	50	.....	.....

## EXHIBIT C.

## LIST OF PARDONS GRANTED BY THE PRESIDENT TO PERSONS CONVICTED OF POLYGAMY.

Name.	District.	When convicted.	Offense.	Sentence.		When
				Imprisonment.	Fine.	
1 H. S. Wisner	Utah.	Sep. term, 1879	Bigamy	2 years.	.....	Nov. 26, 1880
2 Thomas Simpson	"	March term, 1885	Polygamy.	" "	.....	Oct. 12, 1885
3 Joseph H. Evans	"	Nov. term, 1884	Unlawful cohabitation.	3 years and 6 months.	\$250	Mar. 7, 1887
4 William Felstead	"	Sep. term, 1887	Polygamy & unlawful cohabitation.	3 years and 6 months.	300	Nov. 16, 1887
5 Rudger Clawson	"	Nov. term, 1884	Polygamy & unlawful cohabitation.	4 years.	800	Dec. 5, 1887
6 Charles Livingston	"	Sep. term, 1887	Unlawful cohabitation.	6 months.	500	Dec. 13, 1887
7 Wm. Henry Walker	"	" "	Unlawful cohabitation.	(*)	.....	Jan. 19, 1888
8 Thomas Henderson	"	Nov. term, 1887	Unlawful cohabitation.	months	.....	Jan. 20, 1888
9 William D. Newsom	"	Oct. term, 1885	Polygamy.	3 years and 6 months.	.....	Mar. 27, 1888
10 Peter S. Barton	"	Nov. term, 1887	Unlawful cohabitation.	6 months.	100	" "
11 B. H. Schettler	"	Feb. term, 1888	Unlawful cohabitation.	" "	300	Apr. 25, 1888
12 Dudley Chase	Idaho.	Oct. term, 1887	Adultery.	.....	.....	Apr. 26, 1888
13 John R. Barnes	Utah.	Apr. term, 1888	Unlawful cohabitation.	3 months.	300	June 13, 1888
14 Wm. R. Smith	"	Feb. term, 1888	Unlawful cohabitation.	6 months.	300	July 23, 1888

## REASONS ASSIGNED FOR GRANTING SAID PARDONS.

1 Pardon granted upon the recommendation of the judge, United States attorney, and marshal for Utah Territory, for satisfactory reasons.

2 Upon the ground that he was an honest, hard-working man, who had never before been charged with violation of the laws, and the only support of his mother, who is upwards of eighty years of age, etc., and was recommended for pardon by the United States judge and district attorney who officiated at his trial.

3 Because he was an old man and there had been for years a total separation from his plural or polygamous wife, etc.

4 On account of ill health, old age, and upon the recommendation of the governor, chief justice, and United States district attorney of the Territory, and others.

5 Because of his having served most of his sentence, good conduct whilst incarcerated, having been divorced from his legal wife and married to his plural wife, and on the recommendation of the chief-justice of the Territory, by the governor, the district attorney and his assistant, by the late district attorney and his assistant, and by the United States marshal.

6 Because of his age, poverty, and the helpless condition of his legal wife, and on the recommendation of the chief-justice of the Territory, United States district attorney and his assistant, secretary of the Territory, United States marshal, and other influential citizens.

7 Because of his voluntary appearance before the grand jury, and his statement that he had two wives, but had not lived with either of them since July, 1885, and his promise to obey the law hereafter, and on the recommendation of the United States district attorney.

8 Because of his age and poverty, and on the recommendation of the governor and chief-justice of the Territory. Sentence commuted to three months actual imprisonment.

9 Because of his having served all but seven months of his sentence, is in failing health, and on the recommendation of the governor, United States judge, and district attorney of the Territory.

10 Has served more than two-thirds of his term of sentence, and is too poor to pay his fine; and upon the recommendation of all the officials who had anything to do with his conviction, and also by the Governor of the Territory.

11 Because of his age, and having spine disease, and his having paid the fines and costs imposed upon him; and upon the recommendation of the United States attorney and Marshal.

12 Because of his having pledged himself to conform to the laws, and having dissolved connection with his "plural wife," and on the recommendation of the judges and district attorney of Idaho Territory.

13 Because of his age, good standing, and apparent desire to obey the laws, and his having paid his fine and costs, which amounted to \$412.40; and upon the recommendation of the United States district attorney.

14 Because of his having paid his fine and having served nearly four months of his sentence, and upon the petition of a large number of citizens of Utah, who believe he will hereafter obey the law.

\* Sentence suspended.

† Commuted to 3 months.



*Thos. F. H. Morton*





In another speech, delivered early in October, Delegate Caine satirized the "Industrial Christian Home of Utah"—which had asked Congress for a supplemental appropriation of eighty thousand dollars—and refuted certain charges made against the majority of his constituents as an offset to his speech of the 25th of August.\*

The same month witnessed a continuation of proceedings in the great suit of the Federal Government vs. the Mormon Church. The personal property of the defendant, amounting to four hundred and fifty thousand dollars, was declared forfeited and escheated to the Government, and the real estate in litigation, with the exception of the Temple Block, was continued in the hands of the Receiver.

\*The nature of some of these charges may be gleaned from the following document used by Delegate Caine in the course of his speech:

SALT LAKE CITY, UTAH, October 9, 1888.

DEAR SIR: Yours of this date received, making certain inquiries about women confined in the penitentiary during the month of March last, and quoting certain statements which you claim to have found in the *Congressional Record* of October 3, in the report of Mrs. Angie F. Newman, etc.

With regard to there being seven women confined in the penitentiary at that time, three of whom had babes, I desire to say that it is correct. Two were being held for contempt of court in refusing to answer certain questions put to them by the court touching their polygamous marriage relations: one, Sarah M. Tong, twenty-three years of age, with babe, on the charge of fornication; another for robbery; another for selling liquor without a license, and two for adultery. The statement as to the size of the room in which these prisoners were kept is about correct, being so small as for it to be almost inhuman to keep female prisoners in such a place: but it is the only place we have for that purpose. There is a floor in it, however, which is always kept neat and clean.

The last item to which you call my attention is this: "In another cell were two girls, one fourteen and one sixteen, who were married to their own father, both with babes." This is wholly incorrect, and I can not understand how anybody could have been so misled. Somebody must have made malicious misrepresentations to Mrs. Newman on this subject, as we have never had any girls of this age confined in the penitentiary since I have been marshal.

These facts are taken from the records at the penitentiary, and I personally know them to be correct.

Respectfully submitted,

FRANK H. DYER,  
United States Marshal.

H. B. CLAWSON, Esq.,  
Salt Lake City.

These proceedings took place in the Supreme Court of Utah, beginning on Saturday the 6th of October. Judges Sandford, Henderson, Judd and Boreman were all present. U. S. Attorney Peters, his assistant, Mr. Clarke, and U. S. Attorney Hobson, of Colorado, appeared for the plaintiff; Colonel Broadhead, Messrs. F. S. Richards, Le Grand Young and Ben Sheeks for the defendant; and Mr. P. L. Williams for the Receiver.

The principal business done that day was the filing of petitions from William B. Preston, Robert T. Burton and John R. Winder, the Church Trustees, asking that not only the Temple Block, but also the Tithing Office, Gardo House and Historian's Office properties be set apart and exempted from the proposed forfeiture. E. T. Sprague was appointed Referee to take testimony as to the value of the service rendered by the Receiver and his attorneys.

It was stated that counsel on both sides were endeavoring to come to an agreement as to the terms of the final decree, which the Court would be asked to pronounce, and from which the defense proposed to appeal to the Supreme Court of the United States. They had agreed upon all the facts except those relating to the escheat of the personal property—for which there was no warrant in law\*—and the question had been submitted to the Solicitor-General of the United States, from whom an answer was expected. If it did not arrive by Monday morning an agreement would be reached and the case submitted.

Monday, October 8th, the Court reconvened, and a petition in intervention was filed by George Romney, Henry Dinwoodey, James Watson and John Clark, members of the Church of Jesus Christ of Latter-day Saints, representing that said Church was a voluntary religious society which had become possessed of its property—now in the hands of the Receiver—by voluntary donations of its members,

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\*The Anti-Polygamy Act of 1862 restricted the value of real estate to be owned by any church in the territories to \$50,000; but made no mention of personal property. The Edmunds-Tucker Law provided for the forfeiture and escheat of property held in violation of the Act of 1862.

and praying that, in case the Church corporation should be found to be dissolved, that an order of Court be made returning to the individual members of the Church, or to trustees to be by them appointed, the property in question, that it might be devoted to the purposes for which it was originally given.

To this petition counsel for the Government filed an answer in which it was denied that the property at the time of the seizure, belonged to the Church of Jesus Christ of Latter-day Saints, either as a corporation or as a voluntary religious sect, or that the intervenors, though members of that Church, were equitably or otherwise the owners of said property, or any portion thereof, or beneficially interested therein. It was claimed that all the real estate and a large portion of the personal property were acquired, not by voluntary donations of the Church members, but by purchase; that proceedings were pending against all the real property named in the petition, with a view to having it declared forfeited and escheated, and that by operation of law all the personalty had become escheated to the Government. Finally, it was averred that to deliver the property to the intervenors would be virtually to deliver it to the Church, which would use it for the promulgation of its doctrines, and thus it would be devoted to illegal and immoral purposes.

Mr. Hobson then reviewed the case for the Government, submitted the statement of facts agreed upon, and suggested the nature of the final decree. From the statement of facts the following paragraphs are taken :

That the Church of Jesus Christ of Latter-day Saints was, from the 19th day of January, 1851, to the 3rd day of March, 1887, a corporation for religious and charitable purposes, duly organized and existing under and in pursuance of an ordinance enacted by the Legislature of the Territory of Utah and approved by the Governor thereof on the said 19th day of January, A. D. 1851, a copy of which ordinance is made a part of the complaint herein.

\* \* \* \* \*

That since the passage of said act of Congress on February 19, 1887, the Church of Jesus Christ of Latter-day Saints has existed as a voluntary religious sect, of which the said Wilford Woodruff is the acting president, and has had duly designated and appointed by the Probate Court of Salt Lake County, in said Territory, in pursuance of the act of

Congress aforesaid, the following named trustees: W. B. Preston, Robert T. Burton, and John R. Winder, to take the title to and hold such real estate as shall be allowed said religious sect by law for the erection and use of houses of worship, parsonages, and burial grounds.

\* \* \* \* \*

The said Temple Block was taken possession of by the agents of the Church of Jesus Christ of Latter-day Saints then existing as a voluntary unincorporated religious sect, when Salt Lake City was first laid out and surveyed in 1848, and since said date has been in the possession of said Church as a voluntary religious sect until it became incorporated as aforesaid, and then as a corporation; that at the time the same was taken possession of as aforesaid, it was a part of the public domain, and continued to be such until said land was entered by the mayor of said city, along with other lands, on the 21st day of November, 1871, under the town-site act of Congress entitled "An Act for the relief of cities and towns upon the public lands," approved March 2, 1867. That on the 1st day of June, 1872, the same was conveyed by the mayor of said Salt Lake City to the Trustee-in-Trust, in whom the title remained until the act of Congress of February 19, 1887, took effect.

The facts in regard to the possession and acquisition of the balance of said real estate above described, are as follows: The second property above described and known as the Gardo house and grounds, was owned by Brigham Young individually at the time of his death in 1877 and was thereafter conveyed by his executors to John Taylor as Trustee-in-Trust, for a valuable consideration; that subsequently, on the 24th day of April, 1878, the said John Taylor transferred the same to Theodore McKean, on a secret trust for said corporation, who held the same until the 2nd day of July, 1887, when he attempted to convey it to trustees Burton, Winder, and Preston for the sum of one dollar. That said Gardo house and grounds were used and occupied by said John Taylor, President of said Church, from 1878 up to the time of his death, as a residence.

The Historian's Office and grounds were taken possession of by Albert P. Rockwood, in 1848, and was a part of the public domain, and continued to be such until November 21, 1871, when the town site of Salt Lake City was entered. That on October 3, 1855, the Church of Jesus Christ of Latter-day Saints, through Brigham Young as Trustee-in-Trust, purchased Rockwood's claim and erected thereon the building which has ever since been known as the Historian's Office and residence: that from 1848 till his death, George A. Smith was Historian, and lived in said building with his family; that the books, papers, and records of the Church have always been kept in said building from the time of its construction to the present, at the cost of said Church; and that said office has been and is necessary for the use of said Historian in the discharge of his duties; that in 1872 George A. Smith obtained the title of said premises from the mayor of Salt Lake City under the town site act; and that after his death the same was conveyed to his wife and one of his daughters who afterwards transferred the same to Theodore McKean for a valuable consideration; that the said McKean has held the property since that date on a secret trust for the use and benefit of said corporation.

The part of the Tithing Office and grounds were taken possession of by agents of the Church in 1848, when Salt Lake was first laid out, and ever since that time have been

used by said sect in receiving and distributing tithing and voluntary contributions of property; that prior to July 1, 1862, buildings and other improvements of considerable value had been built thereon by the Church; that at the time they were taken possession of it was part of the public domain; on the 21st of November, 1871, said land was entered under the town-site act. That Brigham Young, then President and Trustee-in-Trust of the Church, claimed said land under the town-site law, and it was conveyed to him by Daniel H. Wells, then mayor of said city; that in November, 1873, Brigham Young transferred the same to George A. Smith, as Trustee-in-Trust; that at his death the legal title to said premises vested in Brigham Young and his successor, and the executors of the Brigham Young estate transferred the property to John Taylor, who in April, 1873, transferred and conveyed the same to Edward Hunter upon a secret trust for the use and benefit of said corporation; that Hunter on the 24th day of April, 1878, transferred and conveyed the same to Robert T. Burton on a secret trust for said corporation, and on the 2nd day of July, 1887, the said Burton attempted to convey the same to W. B. Preston, John R. Winder, and Robert T. Burton, as trustees.

That the other piece of property known as part of the Tithing Office and grounds was possessed, acquired, and owned as follows: That in 1848 Newel K. Whitney, then Presiding Bishop of the Church, took possession of lot 5, block 88, plat A, Salt Lake City survey; and in the same year Horace K. Whitney took possession of lot 6 in said block; that some time in the year 1856 the Church of Jesus Christ of Latter-day Saints, by its agents, took possession of the south half of said lots and placed thereon yards and corrals, and have continued to occupy the same down to the present. That in 1870 the foregoing lots became a part of the town-site entry. The said Church in 1871 filed an application in the proper court for a title to the south half of said lots, and the heirs of Newel K. Whitney also filed an application in the proper court for the south half of said lot 5, and Horace K. Whitney filed an application in the same court for the south half of lot 6. The court awarded the title to the said premises to Brigham Young, as aforesaid. That in 1872 Brigham Young, trustee, obtained a deed from the heirs of Newel K. Whitney to said south half of lot 5, and in consideration thereof paid them seven thousand dollars, and at the same time he also obtained a deed from Horace K. Whitney of lot 6, and paid therefor the sum of two thousand dollars. At the time the act of Congress of February 19, 1887, took effect, the legal title thereto was held by Robert T. Burton on a secret trust for the use and benefit of said corporation; that on the 2nd day of July, 1887, he attempted to convey the same to Trustees Winder, Burton, and Preston, by a certain instrument of writing. \* \* \*

That at the time the said act of Congress of February 19, 1887, took effect, said corporation owned, held, and possessed the following described personal property, to wit: One large safe, one medium-sized iron safe, twenty-five arm chairs, eleven rotary chairs, ten upholstered chairs, two desks, one letter press, eight hundred shares of one hundred dollars each of the capital stock of the Salt Lake Gas Company, 4,732 shares of one hundred dollars each of the capital stock of the Deseret Telegraph Company, one promissory note, dated March 2, 1887, due and payable to John Taylor, Trustee-in-Trust, or order, two years after date, calling for the sum of \$13,333.32, bearing six per cent. interest from date, signed by Sharp and Little, one promissory note, dated March 2, 1887, due and

payable to John Taylor, Trustee-in-Trust, or order, two years after date, and calling for \$1,666.66, with six per cent. interest from date, signed by Le Grand Young; one promissory note, dated March 2, 1887, payable to the order of John Taylor, Trustee-in-Trust, two years from date, calling for \$4,833.33, with interest at six per cent. from date, signed James Jack; one promissory note, \$5,000, with six per cent. interest, signed H. B. Clawson, 30,158 sheep, \$237,666.16 money, proceeds of sales of miscellaneous property. That since said personal property came into the possession of the Receiver heretofore appointed in this cause, he has collected as rent from said real estate \$2,850; as dividends on said gas stock, \$4,900; as interest on said money, \$2,233.60.

That the said corporation of the Church of Jesus Christ of Latter-day Saints was in its nature and by its statute of incorporation a religious and charitable corporation, for the purpose of promulgating, spreading, and upholding the principles, practices, teachings, and tenets of said church, and for the purpose of dispensing charity, subject and according to said principles, practices, teachings, and tenets, and that from the time of the organization of said corporation up to the time of the passage of said act on February 19, 1887, it never had any other corporate objects, purposes, and authority: never had any capital stock or stockholders, nor have there ever been any natural persons who were authorized under its act and charter of incorporation to take or hold any personal property or estate of said corporation, except the trustees provided for by said statute of incorporation.

That the said personal property hereinbefore set out had been accumulated by said latter corporation prior to the passage of said act on February 19, 1887, and that such accumulation extended over a period of twenty years or more. That prior to and at the time of the passage of said act the said personal property had been used for and devoted to the promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of the said Church of Jesus Christ of Latter-day Saints, and the doctrine of polygamy or plurality of wives was one of the doctrines, teachings, tenets, and practices of the said late Church corporation, but only a portion of the members of said corporation, not exceeding twenty per cent. of the marriageable members, male and female, were engaged in the actual practice of polygamy. That since the passage of the said act of Congress on February 19, 1887, the said voluntary religious sect, known as the Church of Jesus Christ of Latter-day Saints, has comprised the great body of individuals who formerly composed the membership of said corporation, and the organization, general government, doctrines and tenets of said voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-day Saints.

That certain of the officers of said religious sect, regularly ordained and certain public preachers and teachers of said religious sect who are in good standing, and who are preachers and teachers concerning the doctrines and tenets of said Church, have, since the passage of said act of Congress on February 19, 1887, promulgated, taught, spread, and upheld the same doctrines, tenets and practices, including the doctrine of polygamy, as were formerly promulgated, taught, and upheld by the said late corporation, and the said teachings of the said officers, preachers, and teachers have not been repudiated or dissented from by said voluntary religious sect, nor have their teachings and preachings or their actions created any division or schism in said voluntary religious sect.

That any dedication or setting aside of any of the personal property heretofore set out as having belonged to the late corporation to the uses and purposes of or in trust for the members of the late corporation of the Church of Jesus Christ of Latter-day Saints, or any of them, would practically and in effect be a dedication and setting aside of said personal property to the uses, and for the purpose of, and in trust for, the unincorporated religious sect known as the Church of Jesus Christ of Latter-day Saints.

It was also agreed that at the commencement of the suit all the personal property in the hands of the Receiver was held in trust for the Church corporation, and that the Temple Block was used exclusively for the worship of God according to the doctrines and tenets of the Church of Jesus Christ of Latter-day Saints; and further, that proceedings were pending and undetermined "for the purpose of having declared and adjudged forfeited and escheated to the Government of the United States" all the real estate except the Temple Block.

Before the Court rendered its decision, Colonel Broadhead called attention to certain points insisted upon by the defense, and which may thus be summarized:

(1) The unconstitutionality of the Edmunds-Tucker Act, so far as it undertook to dissolve the Mormon Church corporation;

(2) The unconstitutionality of the Anti-polygamy Act of 1862, so far as it undertook to amend the charter or limit the property-holding power of said Church.

(3) The Church property, because of vested rights and the sacred purposes for which it was used, was not subject to escheat or forfeiture.

(4) If the Court found the Church corporation to be dissolved, then the personal property should be turned over to the members of the Church, or to trustees to be by them appointed.

The Court's decree was as follows:

It is therefore adjudged and decreed by the Court upon the facts ascertained and declared as aforesaid, as follows, to-wit:

That on the 3rd day of March, 1887, the corporation of the Church of Jesus Christ of Latter-day Saints became and the same was dissolved, and that since said date it has had no legal corporate existence.

Second. It is furthermore adjudged and decreed that the following alleged deeds

hereinbefore set out were executed without authority, and that no estate in the property set out in said deeds is passed by the same or any of them, to-wit: The deed dated June 30, 1887, from John Taylor, Trustee-in-Trust, to W. B. Preston, Robert T. Burton, and John R. Winder, as trustees, for the property described in the Temple Block: the deed dated July 2, 1887, from Theodore McKean and wife to the property known as the Gardo House and grounds: the deed from R. T. Burton and wife for the property described at the Tithing House and grounds. And it is, therefore, ordered and decreed that said alleged deeds and each of them be, and the same are hereby, annulled, canceled, and set aside.

Third, It is further adjudged and decreed that Block 87, known as the Temple Block, be, and the same is hereby, set apart to the voluntary religious worshipers and unincorporated sect and body known as the Church of Jesus Christ of Latter-day Saints, and that the said W. B. Preston, Robert T. Burton, and John R. Winder, trustees appointed by the probate court of Salt Lake County, as hereinbefore set out, do hold, manage, and control said property, so set aside for the benefit of said voluntary religious worshipers and unincorporated sect and body, and for the erection and use by them of houses of worship, and for their use and convenience in the lawful exercise of worship, according to the tenets of said sect and body. And it is ordered that Frank H. Dyer, Receiver of this Court heretofore appointed, do surrender and deliver possession and control of all of the property so set aside, to the trustees, William B. Preston, Robert T. Burton, and John R. Winder.

Fourth, It is furthermore adjudged and decreed that except as to the Temple Block aforesaid, the petitions of William B. Preston, Robert T. Burton, and John R. Winder, trustees, filed the 6th day of October, 1888, in this Court, for the setting aside of certain real estate for the uses and purposes of the religious sect known as the Church of Jesus Christ of Latter-day Saints, be, and the same are hereby, denied. And it is adjudged and decreed that the balance of the real estate, over and above said Temple Block, which has been hereinbefore found as belonging to said corporation, has not, nor has any of it, ever been used as buildings or ground appurtenant thereunto, for the purposes of the worship of God or of parsonages connected therewith, or for burial-grounds, by the said late corporation of the Church of Jesus Christ of Latter-day Saints, nor is the said real estate, except as set aside, or any part thereof, necessary for such purposes for the unincorporated religious sect known as the Church of Jesus Christ of Latter-day Saints.

Fifth, It is further adjudged and decreed that all of the real estate set out in the findings of fact hereinbefore was the property of and belonged to the late corporation of the Church of Jesus Christ of Latter-day Saints, and the same was held in trust for said corporation. And, furthermore, that the legal titles of and estates in said real estate, and every part and parcel thereof, were acquired by said late corporation and its trustees subsequent to July 1, 1862, and that prior to said date neither the said corporation nor its trustees had any legal title or estate in and to said real estate or any part thereof.

Sixth, And it is further adjudged and decreed that the petition of intervention by George Romney, Henry Dinwoodey, James Watson, and John Clark, on behalf of themselves and other members of the late corporation of the Church of Jesus Christ of Latter-day Saints, filed this day in this Court, which said petition alleges the claim on behalf of



the petitioners and those for whom it is filed in and to the real and personal property formerly belonging to said late corporation and now in the hands of the Receiver of this Court, be, and the same is hereby, denied. And it is adjudged and decreed that neither said intervenors nor those in whose behalf they filed said petition have any legal claim or title in and to said property or any part thereof.

Seventh, And the Court further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-day Saints, having become by law dissolved, as aforesaid, there did not exist any trusts or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, whether said acquisition was by purchase or donation, to or for which said personality or any part thereof could be used or to which it could be dedicated that were, and are not in whole or in part, opposed to public policy, good morals, and contrary to the laws of the United States. And, furthermore, that there do not exist any natural persons or any body, association, or corporation who are legally entitled to any portion of said personality as successors in interest to said Church of Jesus Christ of Latter-day Saints, nor have there been, nor are there now, any trusts of a definite and legal character upon which this Court, sitting as a Court of chancery, can administer the personal property hereinbefore set out, and it is furthermore adjudged that all and entire the personal property set out in this decree as having belonged to said late corporation of the Church of Jesus Christ of Latter-day Saints has, by reason of the dissolution of said corporation as aforesaid, on account of the failure or illegality of the trusts to which it was dedicated at its acquisition, and for which it has been used by said late corporation and by operation of law, become escheated to and the property of the United States of America, subject to the costs and expenses of this proceeding, and of the Receivership by this Court instituted and ordered.

Eighth, It is furthermore ordered and adjudged that there is not now, and has not been since the 3rd day of March, 1887, any person legally authorized to take charge of, manage, preserve, and control the personal and real property hereinbefore set out, except the Receiver heretofore appointed by this Court; and it is therefore ordered that the receivership hereinbefore established by this Court is continued in full force and effect, and that the said Receiver shall continue to exercise all and entire the powers and authority conferred upon him by the decree appointing him. And it is further ordered that he do continue in his possession and keeping all of the property, real and personal, hereinbefore set out, except such realty as has been set apart by the provisions of this decree, for the benefit of the unincorporated religious sect known as the Church of Jesus Christ of Latter-day Saints, and that he do safely keep, manage, and control the same in accordance with the provisions of the order of this Court appointing him Receiver, pending the determination of the proceeding upon information hereinbefore referred to, and until the further order of this Court and final action upon and determination concerning the accounts, proceedings, and transactions of said Receiver, and all matters connected with or incidental thereto are ordered to be reserved for the future consideration and decision of this Court.

Mr. Richards gave notice of an appeal to the Supreme Court of the United States. The appeal being perfected, the case was placed

upon the docket of that Court on the 26th of October. A motion to advance was granted December 10th and the case was argued on the 16th, 17th and 18th of January, 1889. The appellants—the Church and the Interveners—were represented by Colonel Broadhead and Franklin S. Richards, assisted by ex-Senator McDonald and Hon. John M. Butler; the respondent by Attorney-General Garland and Solicitor-General Jenks. The cause was submitted and taken under advisement.

Meantime, in Utah, additional proceedings—an outgrowth of the main action—had taken place. They arose over the question of compensation for the Receiver and his attorneys. The inquiry to determine how much should be allowed them began before Referee Sprague on the 13th of October. Mr. John A. Groesbeck, the first witness called, expressed the opinion that five per cent. of the value of the property handled by the Receiver would be a fair compensation for his services during the past eleven months. This was equivalent to forty thousand dollars. Receiver Dyer thought his compensation should not be less than twenty-five thousand dollars, while Mr. Williams, his attorney, and U. S. Attorney Peters, who had also been employed by him, each believed himself entitled to ten thousand dollars.

Mr. J. L. Rawlins, one of the attorneys, did not see how Mr. Peters could represent both the Government and the Receiver, or, as he expressed it, “serve God and the devil at the same time.” He also wanted to know why the public schools, which were interested in “this property matter,” were not represented in these proceedings. On the Referee’s ruling that the U. S. Attorney represented both the Government and the Receiver, Messrs. Sheeks and Rawlins withdrew from the examination.

Messrs. E. P. Ferry, Fred Auerbach, W. H. Remington, Fred Simon, L. Goldberg, J. E. Dooly, C. P. Mason, W. S. McCornick, Jacob Moritz and other witnesses, stated that twenty-five thousand dollars was a fair and reasonable compensation for the Receiver, and Attorneys Arthur Brown, J. R. McBride, M. Kirkpatrick and C. W.

Bennett held that ten thousand dollars each was a moderate compensation for Messrs. Williams and Peters.

On November 17th the question was before the Supreme Court of the Territory, where a most unexpected turn in affairs was taken, caused by the sudden appearance of ex-Chief Justice Zane, as attorney for certain school trustees of Salt Lake City, who protested against the granting of the fees asked by the Receiver and his attorneys. Judge Zane was requested to present his matter in writing, and did so on the 1st of December. The petition of these intervenors charged, not only that the Receiver's claim and that of his attorneys were "grossly excessive, exorbitant and unconscionable," but that they had been guilty of fraud, misconduct and corruption.

This led to a judicial inquiry into the conduct and accounts of the Receiver; Robert Harkness being appointed Examiner in the case. Charles S. Zane, John M. Zane and R. N. Baskin were attorneys for the trustees, and Judge Powers attorney for the Receiver. Messrs. Williams and Peters appeared for themselves. The Receiver's answer, filed on the 8th of December, denied every allegation of his accusers. Two days later, upon his declining to answer certain questions, he was adjudged in contempt by the Examiner, and the matter went before the Supreme Court.

There, on the 14th of January, Judge Zane reiterated his charges of fraud against the Receiver, accusing him of "hobnobbing with the Mormon leaders on the underground," and of compromising with them on the values of properties, etc. Growing vehement as he proceeded, the ex-Judge said, referring to the Edmunds-Tucker Act: "The law is on the border of that on which legislators have no right to legislate. I, with my brethren upon the bench, held the law to be constitutional. I don't propose to see any fraud in connection with it. I don't want any disgrace attaching to my name. I ask that this investigation go on, and go on fairly, on all the issues of the petition."

The judges disagreed in their opinions and matters became com-

plicated, but finally it was ordered that the examination proceed, and that the inquiry be limited to the charges of fraud and corruption, without dealing with the question of compensation. Judge Zane objected to this, and next day announced the withdrawal of his clients from the examination. The paper presented by him in their behalf said:

We came here to contest the compensation of the Receiver and his solicitors, and our petition was for that purpose. \* \* \* The Court has now ruled that we cannot do the only thing that we were interested in doing or had the right to do. As long as we had some chance of benefiting the common schools of this Territory we thought it our duty to proceed, but we conceive it to be no part of our duties as school trustees to prosecute charges of fraud and corruption against officers of this Court.

On the 29th of January, the Court, by Judge Judd, (Judge Boreman dissenting) gave a ruling in which the paper in question was characterized as "scurrilous, contemptuous and insulting;" and the trustees were summoned to appear and show cause why they should not be punished for contempt. They appeared, and in spite of their disclaimer, were adjudged in contempt. The Court, to vindicate itself, then ordered an investigation into the conduct of the Receiver. This examination, which was searching and thorough, ended in the exoneration of that official and his attorneys from the charges of fraud and corruption made against them. The school trustees, having withdrawn the objectionable paper, were let off by paying the costs of the proceeding.

On March 2nd the Court passed upon the question of compensation, which had been reported on previously by Examiner Sprague. He had recommended that the claims of the Receiver and his attorneys be allowed. The Court, however, basing its decision upon still another investigation ordered by Attorney-General Garland, adjudged the fees to be excessive, and they were reduced accordingly. The Receiver, for his services, was given ten thousand dollars; Mr. Williams, five thousand five hundred dollars, and Mr. Peters four thousand dollars. These amounts, with the compensation of the Examiner, and other expenses, made the cost of one

year's receivership aggregate \$27,365.63. The money was paid out of the Church funds in the hands of the Receiver.

The fall election of 1888 saw three candidates in the field for the Utah Delegateship; namely, Hon. John T. Caine, renominated by the People's party; Hon. Robert N. Baskin, nominated by the Liberal party; and Hon. Samuel R. Thurman, nominated by "The Democratic party of the Territory of Utah."

The leading spirits in the last-named organization, which had just been formed, were Messrs. Hadley D. Johnson, J. G. Sutherland, J. H. Paul, W. H. Cassady, S. A. Kenner, H. J. Faust, J. M. Benedict, S. R. Thurman, W. N. Dusenberry, W. H. King, W. K. Reid, J. B. Milner, W. H. Seegmiller, A. W. Ivins, W. K. Wall, J. D. Page, W. R. Pike, A. H. Snow, James Melville, F. J. O'Brien, James Mack, William Creer, George E. Blair, Samuel Francis, F. R. Kenner, I. C. Thoreson, S. W. Darke and others. Their party was nicknamed "The Sagebrush Democracy." Judge Dusenberry was chairman of the organization and S. W. Darke secretary. Their convention, like that of the People's party, was held at Salt Lake City. The Liberals met at Park City.

At the election on the 6th of November, Mr. Caine was chosen by a large majority to again represent the Territory in Congress. This election took place simultaneously with the great national political contest that restored to power the Republican Party, with Benjamin Harrison as Chief Magistrate of the Republic.

Early in 1889 the question of Utah's Statehood again came prominently before the country. The main struggle for and against the proposition took place at Washington before the House Committee on Territories, to which had been referred, in January, 1888, Delegate Caine's bill for the admission of Utah into the Union. It was a continuation of the movement for Statehood upon the anti-polygamy platform of 1887.

Among those sent by the Liberal party to the seat of Government to fight the movement at this time were Messrs. R. N. Baskin, J. R. McBride and E. P. Ferry. Mr. P. H. Lannan, manager of the

Salt Lake *Tribune*, also made it a point to be in Washington during the winter, as did Governor West, who played a prominent part in the proceedings before the committee. The Liberal leaders also enlisted the services of Delegate Dubois, of Idaho.

On the other side, battling with equal force and fervor, were Delegate Caine, Hon. F. S. Richards, Judge Jere M. Wilson, a Washington lawyer specially retained; Hon. C. C. Bean and Hon. M. A. Smith, of Arizona, the former an ex-Delegate, the latter the sitting Delegate from that Territory.

The hearing before the committee—of which Hon. William M. Springer was chairman—began on the 12th and ended on the 22nd of January. It was a notable contest, and the champions on either side were well chosen. All the speeches were able, and dealt with issues more or less familiar to the reader.

Judge McBride made his speech remarkable by asserting that there never was a more inviting country to the settler than Utah when the Mormons came here. Said he: "I have had my moccasins wet with the dew on the grass while riding on my horse, in passing through the meadows of Salt Lake Valley before it was ever settled."

Mr. Caine referred to the practice of the Federal courts in Utah—now that "segregation" was no more—of prosecuting men for "adultery" with their plural wives.\*

Mr. Dubois portrayed the situation in Idaho, where, he said, Mormons, in order to evade the law disfranchising all members of their Church, had pretended to withdraw from that Church. He presented a memorial from the Idaho Legislature praying that Utah be not admitted as a State, and that she be governed by a legislative commission.

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\* Such prosecutions began while U. S. Attorney Dickson was in office, and continued into the regime of his successor. It was held that a plural wife was no wife at all; consequently a man cohabiting with his plural wife, was guilty of adultery under the Edmunds-Tucker Act. The penalty for adultery was imprisonment for three years.

Governor West followed. The gist of his speech is found in the following excerpts :

It is with much satisfaction that I am enabled to state that marked and decided changes for the benefit and advancement of the people and the prosperity of the Territory have taken place. To some extent there has been a bridging of the chasm that has separated the Mormon and non-Mormon people since the settlement of this Territory. The Mormon people in some measure have relaxed the old rule of rigorous exclusiveness, which has heretofore kept them separate and entirely apart from their non-Mormon fellow-citizens. They have exhibited a spirit of liberality and enterprise in appropriating moneys for needed charitable and educational institutions. Without having the control, they have united with non-Mormons in public organizations for the protection of and increase of trade; they have united with them also in the celebration of the national anniversary upon the last two occasions of its observance; and they have united with them also for the advertising of the advantages and resources as a means of securing new population and capital for their development.

They have, where the power has been in their hands, while retaining control, liberalized the municipal government of this city by giving representation therein to the non-Mormons. They have done likewise in the boards controlling the Asylum for the Insane, the Deseret University, the Reform School, the Agricultural College, and the Territorial fair; the last Legislative Assembly enacted liberal laws for cities, enabling them to make loans and issue bonds for sewerage and the obtaining of additional supplies of water. They have provided also for election of aldermen and councilmen by wards in cities.

The Governor went on to say that all these changes had occurred since the enactment of the Edmunds-Tucker Law, and that it could scarcely be doubted that Statehood for Utah was the end sought by the makers of these concessions. He spoke of the "irrepressible conflict" between the Mormon system and the government established by the United States, and said: "I shall not arraign the Mormon people as wanting in comparison with other people in religious devotion, virtue, honesty, sobriety, industry, and the graces and qualities that adorn, beautify, and bless life. Nor will I attempt to detract from the praise and glory that is due, or claimed, for the hardy pioneers who settled and reclaimed this land." None of these things, however, could justify, in his opinion, "the despotism of the Mormon political system." Like his confreres, he opposed the admission of Utah as a State.

Mr. Baskin's speech was along the same lines as speeches previously delivered by him on the Mormon question.

Messrs. Bean and Smith defended the Mormon people, and the latter advocated Statehood for Utah as the best means of solving the Mormon problem.

Judge Wilson, who made the closing address, answered the objections to Utah's Statehood by showing that only a small percentage of the Mormon people were in polygamy; that the great majority of them had declared against it, and against the union of Church and State; that Congress had power to enforce the special compact proposed by the constitution submitted; that the Mormon Creed was "Mind your own Business," and that the Gentile fear of Mormon tyranny was groundless.

On the 2nd of March Chairman Springer, for the committee, reported the bill for Utah's admission, recommending "that it be placed on the calendar for consideration and action thereon by the House." Mr. Struble submitted the views of the minority of the committee, who advised the postponement of favorable action upon the bill, and the continuance of the course that was being pursued toward Utah, "until obedience to the rightful and reasonable authority of the General Government should be accorded by the Mormons." The minority seem to have had their way; favorable action upon the pending question being indefinitely postponed.





L. J. Herrick



## CHAPTER XXV.

1889.

GOVERNOR THOMAS SUCCEEDS GOVERNOR WEST—CHIEF JUSTICE SANDFORD'S REMOVAL—HE IS SUCCEDED BY CHIEF JUSTICE ZANE—U. S. ATTORNEY PETERS AND U. S. MARSHAL DYER RESIGN—JUDGE JUDD GOES OUT OF OFFICE—THE HANS NIELSON CASE—HOWARD SPENCER'S TRIAL AND ACQUITTAL—THE FIRST PRESIDENCY OF THE MORMON CHURCH AGAIN REORGANIZED—OGDEN CITY CAPTURED BY THE LIBERALS—A LIBERAL MAJORITY IN THE CHIEF CITY OF MORMONDOM—GOVERNOR THOMAS AND THE UTAH COMMISSION ON THE SITUATION.

THE return to power of the Republican party was signaled in Utah by various official changes. President Harrison was not so deliberate as his predecessor had been in causing mutations of that character. Within six months after his inauguration—March 4, 1889—the most important Federal offices in the Territory had been vacated by their Democratic incumbents, to make way for Republican appointees. Not all the retiring officials were absolutely removed. Some of them resigned before a request to do so reached them. One or two Democrats were allowed to retain their places.

Governor West's resignation was requested. He was succeeded by Hon. Arthur L. Thomas, who had been Secretary of the Territory under Governor Murray and subsequently a member of the Utah Commission. It was on the night of the 6th of May that Mr. Thomas was apprised, by special telegram, of his appointment as Governor. Immediately afterwards came the announcement that Colonel Elijah Sells, of Salt Lake City, had been nominated to succeed William C. Hall as Territorial Secretary. These and other appointments were made by the President *ad interim*. Congress not being in session, they were not confirmed by the Senate until the following December.

Governor Thomas took the oath of office ten days after his

appointment. He was succeeded as a member of the Utah Commission by ex-Governor Alvin Saunders, of Nebraska. Another new member of that board was Hon. Robert S. Robertson, of Indiana, the successor to Mr. Carlton, who had resigned in April and returned to his eastern home. Mr. Godfrey succeeded him as chairman of the Commission. All its members, save one, were now in sympathy with the radical wing of the Liberal party. The exception was General McClernand.

The next important change, and the one that caused more comment than all the others combined, was the summary removal of Chief Justice Sandford, and the appointment in his stead of the man who had been his predecessor,—Hon. Charles S. Zane. The news of this change was telegraphed to Utah on the 24th of May. It was known that Judge Zane had influential friends working in his interest both in Utah and at Washington. That President Harrison viewed his past course with favor was apparent. His reappointment was accepted as an indication of the policy of the new Administration toward Utah.

But it was the removal of Judge Sandford, more than the selection of Judge Zane as his successor, that created surprise in the public mind. This act occasioned wide-spread critical comment, not only in Utah but in all parts of the country. The correspondence upon the subject between the United States Attorney-General and Chief Justice Sandford was as follows:

DEPARTMENT OF JUSTICE, Washington,

May 10, 1889.

*Hon. Elliot Sandford, Salt Lake City, Utah:*

SIR.—I am directed by the President to advise you that in his opinion the public interest will be subserved by a change in the office of Chief Justice of Utah, and this being so, he would be pleased to receive your resignation as such Chief Justice.

Trusting that we may hear from you soon, I am very respectfully yours,

W. H. H. MILLER,

Attorney-General.

SUPREME COURT OF UTAH TERRITORY,

SALT LAKE CITY, UTAH, May 17, 1889.

*Hon. W. H. H. Miller, Attorney-General, U. S. A.:*

SIR.—I am in receipt of your note of the 10th inst., in which you state that, in the

opinion of the President, the public interest will be subserved by a change in the office of Chief Justice of Utah, and that he would be pleased to receive my resignation of that office.

In reply I beg to inquire whether there are any charges of misconduct or malversation in office, or any complaints preferred against me. In case of such charges I think you will agree with me that it will be unwise, unbecoming and improper to resign the office of Chief Justice until they have been either proven or disproven and disposed of.

Will you do me the favor to inform me at a date as early as possible as to this fact, that I may be advised as to any conduct on my part that renders a change in the office of Chief Justice necessary or desirable?

I may add that if a change is necessary for *political reasons only*, the President can have my resignation as soon as the business of the court and the proper disposition of matters now pending before me will permit.

It will not be improper for me to now state that my resignation of the office was considered in March last, while in New York, and a resignation written to be sent to the President, but it was, at the urgent solicitation of several prominent members of the Salt Lake bar, both Republicans and Democrats, withheld.

I am most respectfully,

Your obedient servant,

ELLIOT SANDFORD,

DEPARTMENT OF JUSTICE, WASHINGTON,

May 23, 1889.

*Hon. Elliot Sandford, Chief Justice Utah Territory, Salt Lake City, Utah:*

SIR.—Your letter of the 17th inst., in reply to mine of the 10th instant, informing you that in the opinion of the President the public interest would be subserved by a change in the office of Chief Justice of Utah, and that he would be pleased to receive your resignation of that office, is to hand. Answering the same, I beg to say that there are on file in this department some papers complaining of the manner in which your judicial duties are discharged. Independently of these particular complaints, however, the President has become satisfied that your administration of the office was not in harmony with the policy he deemed proper to be pursued with reference to Utah affairs, and for this reason he desired to make a change, and out of courtesy gave you an opportunity to resign. As you did not see fit to embrace this opportunity, the President has removed you and appointed your successor.

Very respectfully yours,

W. H. H. MILLER,

Attorney-General.

SUPREME COURT OF UTAH TERRITORY,

SALT LAKE CITY, UTAH, June 1, 1889.

*Hon. W. H. H. Miller, Attorney-General, Washington, D. C.:*

SIR.—Your letter of the 23rd ult., in which you state the President has become satisfied that the administration of the office I hold was not in harmony with the policy he

deemed proper to be pursued with reference to Utah affairs, and, for this reason, he desired to make a change, has been received.

In reply I have the honor to say that my earnest purpose while on the bench, as Chief Justice of this Territory, has been to administer justice and the laws honestly and impartially to all men, under the obligations of my oath of office. If the President of the United States has any policy which he desires a judge of the Supreme Court to carry out in reference to Utah affairs, other than the one I have pursued, you may say to him that he has done well to remove me.

Very respectfully,  
ELLIOT SANDFORD.

Upon the storm of criticism awakened by the remark of Attorney-General Miller, as to the "policy" that the President "deemed proper to be pursued" by Federal Judges in Utah, we will not dwell. Suffice it that such a storm was awakened. Not to mention the unusual act of removing a judge against whom no formal charge had been preferred, much less sustained, the idea that magistrates, chosen to administer the law and mete out justice, were but the factotums of a partizan administration and its "policies," was a new doctrine to American minds. For many days the country resounded with a journalistic bombardment, pouring the hot shot of protest and denunciation toward the nation's capital.

Judge Sandford's dignified yet exquisitely satirical response to the Attorney-General, was in everybody's mouth, and it is safe to say that the letter containing it did more for its author's fame than any previous act of his life.

Judge Zane took the oath of office on the 3rd of June, and entered upon his second term as Chief Justice of Utah on the day following. His course thereafter was not what many feared it would be. He seemed to be actuated by a kinder or more conservative spirit than formerly, and eventually became popular with many if not most of the Mormon people; and that, too, while retaining his popularity with the Gentiles.

Another change in the Judiciary had preceded the reinstallation of Chief Justice Zane. Associate Justice Boreman had again retired. His successor, Hon. Thomas J. Anderson, had been appointed by President Cleveland on the 14th of January, and had arrived in

Utah on the 20th of March. He was one of the Democrats whom President Harrison allowed to remain in office.\* His predecessor, Judge Boreman, became Commissioner of Schools for the Territory, succeeding Mr. P. L. Williams in that position.

The officials next to retire were U. S. Attorney Peters and U. S. Marshal Dyer. They had placed their resignations at the disposal of President Harrison soon after he came into power, but months passed and no action was taken in their cases. Mr. Peters, becoming weary of the suspense, wrote to Washington requesting that his resignation be accepted. A few days later the telegraph announced the appointment of Charles S. Varian as United States Attorney, and of Elias H. Parsons as United States Marshal for Utah. The date of these appointments was the 12th of July. Messrs. Varian and Parsons were both residents of Salt Lake City. Mr. Peters, on being relieved, returned to his former home in Ohio. Mr. Dyer remained in Utah.†

Next came the resignation of Associate Justice Judd, who expressed his wishes to the President in the following terse epistle:

SUPREME COURT OF UTAH TERRITORY,  
SALT LAKE CITY, UTAH,  
September 3, 1889.

*To Benjamin Harrison, President of the United States:*

I herewith hand you my resignation as Associate Justice of the Supreme Court of the Territory of Utah, to take effect the 10th day of October, 1889.

I am with great respect,

Your obedient servant,

J. W. JUDD.

Judge Judd had contemplated resigning several months earlier; not because he would not serve under a Republican administration,

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\* Judge Anderson was a native of Illinois, but had spent most of his life in Iowa. He was Assistant Commissioner of the General Land Office and a resident of the City of Washington at the time of his appointment to Utah.

† He continued to act as Receiver in the Church property suits (until succeeded by Mr. Henry W. Lawrence) and embarked in various extensive business enterprises. He was a potent factor in bringing about the political changes witnessed in the Territory early in the nineties.

but because he was unwilling to acquiesce in a doctrine so repugnant to his Democratic instincts as that enunciated by Attorney-General Miller at the time of Judge Sandford's displacement. When the latter was removed for not being in harmony with President Harrison's "policy" with reference to Utah, it was equivalent to an affirmation that the officials permitted to remain were considered in full accord with that "policy." This, at least, was Judge Judd's view of the matter. He resented the implication that the Judiciary was a catspaw for a co-ordinate branch of the Government, and would not continue in a position that placed him in a false light before the people. Hence his determination to resign, meditated as soon as it became apparent that the President did not intend to remove him, and finally carried into effect.

It was understood that Judge Henderson shared the sentiments of his associate, and thought of tendering his resignation at the same time. If such was his design he reconsidered it, for he remained in office till the expiration of his term.

The most important case tried by Judge Judd while upon the Utah bench, was that of the *United States vs. Hans Nielson*. This defendant had been indicted on the 27th of September, 1888, by the grand jury of the First District, for unlawful cohabitation; it appearing upon the testimony of four witnesses that from the 15th of October, 1885, to the 13th of May, 1888, he "did unlawfully claim, live and cohabit with more than one woman as his wives, to wit: with Anna Lavina Nielson and Caroline Nielson." On the day that this indictment was found, another was brought against him for adultery, alleged to have been committed with the said Caroline Nielson on the 14th of May, the day after the close of the period covered by the first indictment. The two bills were found upon the testimony of the same witnesses, before the same grand jury, on one oath and one examination.

It was shown that from October 15, 1885, to September 27, 1888, the defendant had continuously and without intermission cohabited with the women named as his wives, and that during





*H. H. Cluff*



the continuance of said cohabitation, to wit, on the 14th of May, 1888, he had had intercourse with Caroline. Upon this showing the grand jury, instead of indicting him for a continuous cohabitation from October 15, 1885, to September 27, 1888, presented an indictment for unlawful cohabitation during the time prior to May 14, 1888, and then returned an indictment for adultery, the basis of which was the alleged act on that particular date. The indictment for unlawful cohabitation was under the Edmunds Act; that for adultery under the Edmunds-Tucker Law.

Mr. Nielson was put upon trial for the first named offense in November, 1888. The proceedings took place before Judge Judd at Provo. Convicted on November 19, he was fined one hundred dollars and costs and sentenced to three months' imprisonment. After serving out his time and otherwise satisfying the judgment pronounced upon him, the defendant, on the 7th of March, 1889, came to trial in the same court on the charge of adultery. He pleaded a former conviction, claiming that the two acts charged against him were one and indivisible, and that having been tried and punished once, he ought not to be put in jeopardy a second time for the same offense.

The prosecution demurred to the plea, and the Court sustained the demurrer. The defendant was again convicted and on March 12, 1889, sentenced to four months' imprisonment. A petition for a writ of habeas corpus, in which the prisoner, representing that he was being punished twice for the same offense, prayed to be discharged from custody, was presented to the District Court, which refused to issue the writ, and an appeal was taken to the Supreme Court of the United States. The case was advanced upon the calendar and argued in the latter part of April. Judge Jeremiah M. Wilson, Franklin S. Richards and Samuel Shellabarger appeared for the appellant, and Solicitor General Jenks for the Government.

It was held by counsel for the appellant that the District Court erred in refusing to issue the writ of habeas corpus, and in holding that the adultery charged was not embraced in the offense of unlaw-

ful cohabitation. They maintained that the prisoner's conviction of unlawful cohabitation, which included the alleged act of adultery, was a bar to the second prosecution.\*

Counsel for the Government argued that the prisoner had not been twice convicted of the same offense, since the offenses charged were not identical.

The Court rendered its decision on the 13th of May. It reversed the judgment of the trial court; holding with the appellant's counsel that a person could not be convicted of two different offenses covered by the same transaction, and that the prisoner, Hans Nielson, must therefore be set at liberty.

His release followed immediately; also the liberation of several others who had been convicted in like manner and were then in the Penitentiary serving out sentences for unlawful cohabitation and adultery with their plural wives. Among those who had been thus sentenced were Joseph Clark, Charles S. Hall, Albert Jones and William H. Maughan. The last named was Bishop of Wellsville, Cache County.

In justice to Judge Judd, who tried the Nielson case, and from whose decision denying the writ of habeas corpus the appeal was taken, it should be stated that this was a test case, tried with the understanding that it would be passed upon by the Supreme Court at Washington. The Judge was of the opinion that the law would sustain the procedure, which was similar to the practice under a certain law of the State of Tennessee. The allegation made at the time, that the action of the District Court in the Nielson case was an effort to resuscitate the corpse of "segregation," he repels with warmth to this day.

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\* The brief of appellant's counsel said: Multiplication of punishments is not the policy of the law, and we cannot believe that it was the intention of Congress to punish a man by fine and imprisonment for living with a woman three years, as his wife, and then add to that punishment, or make it possible to add to it, hundreds of convictions for sexual intercourse occurring during the period of, and being a part of the cohabitation, the punishment for which would be an aggregate of penal servitude that would require centuries of time to discharge.

Another notable case tried by Judge Judd was that of the People vs. Howard O. Spencer, indicted for murder in the first degree. The crime charged was of somewhat ancient date. It was the killing of Sergeant Ralph Pike on the 11th of August, 1859; an event briefly touched upon in the closing chapter of the first volume of this history.

The trial began at Salt Lake City on the 6th of May, 1889, almost thirty years after the homicide. It devolved upon Judge Judd to preside because he was temporarily assisting Chief Justice Zane in the Third District. The prosecution was conducted by U. S. Attorney Peters, whose resignation had not yet been accepted. He was assisted by Ogden Hiles. The defendant was represented by Messrs. Arthur Brown, Sheeks and Rawlins and Le Grand Young. The jurors who tried the case were Frank Van Horne, E. B. Kelsey, John McVicker, William J. Lynch, H. C. Reich, T. P. Murray, J. B. Cornwell, Owen Hogle, J. L. Perkes, Frank Shelton, A. W. Caine and John M. Young; nearly all non-Mormons.

In stating the case for the prosecution, Assistant U. S. Attorney Hiles said that the reason it had not come to trial before was because the whereabouts of the defendant had been unknown, and that it was not till the summer of 1888 that his arrest was effected.

Mr. Brown, in reply, maintained that the first part of this statement was inaccurate. The whereabouts of the defendant had been well-known, and the real reason why he had not been tried before was because the grand jury had ignored the matter, not deeming a prosecution justifiable. Mr. Spencer had always been willing to meet the charge, but it had not been prosecuted for the simple reason that there was no case against him.

The witnesses examined were Lewis W. Smith, James Gordon, Mrs. Elizabeth Townsend, Stephen Taylor, William A. Williams, William Appleby, Henry Heath, Lehi Daniels, Henry Cushing, W. L. Pickard, Leonard Phillips, Claudius V. Spencer, George Reeder, Elijah Seamons, Mrs. Margaret Spencer, Dr. W. F. Anderson, Mrs. Martha Spencer, Drs. Benedict, Hamilton, Richards and Bascom,

George B. Spencer, O. F. Herron, William Brown, Vincent Shurtliff, H. B. Clawson, Thomas Jenkins, Mrs. Catherine Spencer Young, Mrs. Ellen Spencer Clawson, Drs. Dart and Ewing. The testimony adduced sustained the following account of the Spencer-Pike homicide:

In the spring of 1859, Howard O. Spencer, then about twenty-one years of age, was herding cattle in Rush Valley, at a ranch owned by his uncle, Daniel Spencer, and others. This ranch was not many miles from Camp Floyd, founded the year before by Johnston's army. Some of the soldiers from that post, wishing to mow their next winter's hay in Rush Valley, ordered young Spencer to vacate the land and drive off his stock. Prior to this a number of cattle had been killed by the soldiers. It was evening, and Spencer was feeding some of his stock when the military squad, headed by Sergeant Pike approached and commanded him to leave. The youth, high-spirited and fearless, demurred to this rough request. He said it was too dark to collect the cattle, and he would not remove them till morning. Thereupon the sergeant clubbed his musket and brought it down with great force upon Spencer's head. The latter, seeing the gun descending—though his back was partly turned to his assailant—raised his hay-fork to ward off the blow. He only succeeded in part; the fork was shattered, and the heavy weapon struck him on the right side of the head, crushing in the skull and inflicting a fearful wound, which bled profusely. He dropped as if dead. Elijah Seamons caught him as he fell, but was ordered by Pike to let him alone, or he would serve him the same way. The sergeant then directed his men to turn Spencer's head down hill, "so that he could bleed." Seamons was finally permitted to care for his friend, who remained unconscious, and having taken him to his house, near by, he sent for the army surgeon at Camp Floyd. The latter, on examining the wound, found a piece of bone pressing upon the brain, which was oozing from the aperture. This piece of bone he removed. Next day the patient was conveyed to Salt Lake City and there attended by Dr. W. F. Anderson. Several

pieces of bone were removed from his fractured skull. He remained for some time in a comatose state. Recovering consciousness he suffered terribly for several months, and after regaining a portion of his health, was found to be a much changed man. Formerly light-hearted, mild-tempered and amiable, he was now gloomy, despondent and irritable, subject to fits of frenzy, during which his family and friends regarded him as insane. While in this condition he did the deed for which he was destined to be indicted and tried for murder.

It was on the night of the 22nd of March that Sergeant Pike assaulted Howard Spencer in Rush Valley. It was about noon on the 11th of August that Howard Spencer shot and mortally wounded Sergeant Pike at Salt Lake City. The latter, attended by a military escort, had come from Camp Floyd to answer in the District Court to an indictment for the assault, and was walking with three of his comrades on Main Street, when Spencer, entirely alone, approached him, enquired his name, drew a pistol and fired the fatal shot. The assailant fled across the street westward, and disappeared through Martin's alley. He was followed by a large crowd, but succeeded in escaping. Pike was carried into the Salt Lake House, where a few days later he died.

Such were the essential facts of the homicide, as developed at the Spencer trial in 1889. The case was argued and given to the jury on the 10th of May. Next morning the jurors came into court, and by their foreman, John M. Young, rendered a verdict of "not guilty." This verdict—though not approved by Judge Judd, who expressed his dissatisfaction before discharging the jury—was applauded in the court-room and met with almost universal approbation from the public, Gentiles as well as Mormons.

Judge Judd was succeeded upon the bench by Hon. John W. Blackburn, a recent arrival in Utah, who received his appointment on the 11th of October. His predecessor, a few years later, became U. S. Attorney for the Territory.

Simultaneously with the political changes noted, came others equally important in ecclesiastical circles. April, 1889, witnessed

the reorganization of the First Presidency of the Mormon Church; an event followed, in October of that year, by the ordination of three new Apostles. The former event occurred at the Fifty-ninth Annual Conference of the Church, which convened on Saturday, the 6th of April, at the Tabernacle in Salt Lake City. There were present, of the general authorities, Apostles Wilford Woodruff, Lorenzo Snow, Franklin D. Richards, George Q. Cannon, Moses Thatcher, John Henry Smith, Heber J. Grant and John W. Taylor; Counselor Daniel H. Wells, Patriarch John Smith, Elders Henry Herriman, Jacob Gates, Abraham H. Cannon, Seymour B. Young and John Morgan; Bishops William B. Preston, Robert T. Burton and John R. Winder. Not since the beginning of the crusade, had so many of the Mormon leaders appeared in public.

George Q. Cannon, one of the Apostles, had been released from the Penitentiary, after an imprisonment of over five months, on the 21st of February. Apostle Francis M. Lyman was about to emerge from the same place of confinement.\* The three remaining Apostles, Joseph F. Smith, Brigham Young and George Teasdale, were still "on the underground." †

Apostle Cannon, by request of President Woodruff, presented the following names, which were unanimously sustained by the vote of the conference for the various offices mentioned:

Wilford Woodruff, as Prophet, Seer and Revelator to, and President of the Church of Jesus Christ of Latter-day Saints in all the world.

George Q. Cannon, as First Counselor in the First Presidency.

\* He was liberated, at the expiration of his term of imprisonment, at six o'clock a. m. Monday, April 8th, and attended the forenoon meeting of the conference on that day.

† It should be stated that upon the death of President John Taylor, in July, 1887, his counselors, George Q. Cannon and Joseph F. Smith, took their former places in the quorum of the Twelve. This body, which for some time prior to that event had had but eleven members, was thus increased to thirteen; John W. Taylor, a son of the late President, being the one most recently ordained. The death of the veteran Erastus Snow, at Salt Lake City, May 27, 1888, reduced the number of those included in the Apostolic Council to twelve, where it stood at the time of the April conference, 1889.



Joseph F. Smith, as Second Counselor in the First Presidency.  
Lorenzo Snow, as President of the Twelve Apostles.

The reorganization of the First Presidency created three vacancies in the Council of the Twelve, and these were filled at the Semi-Annual Conference, six months later, when Elders Marriner W. Merrill, Anthon H. Lund and Abraham H. Cannon were called to the Apostleship.

Turning again to political matters, we have now to record two other important incidents of the year 1889. One of these was the capture of Ogden City by the Liberals; the other, the announcement of a Liberal majority in the chief city of Mormondom.

The population of the stirring capital of Weber County had been of a mixed character—with reference to Mormons and Gentiles—for many years; particularly since the advent of the railroad in 1869. Next to Salt Lake City, Ogden was the busiest town in Utah. The principal railway center of the Rocky Mountain region—the point where five lines of track formed a junction from east, west, north and south—it was but natural that it should attract population and exhibit more life than other cities of its size not situated so advantageously.

At the opening of 1889, and even before that time, it was discovered that in Ogden the voting strength of the People's party and that of the Liberal party were about equal; the former holding down the scale by a mere handful of ballots. This year the Liberals resolved to win the city election. A large campaign fund was raised, and their organization, already efficient, was rendered more so by leaders who were trained politicians. Their manager in this campaign was Hon. H. W. Smith, alias "Kentucky" Smith, late of Idaho, a man of exceptional ability.\*

Realizing their danger, the People's party put forth their might, but not so successfully as their opponents. The latter, it was

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\* Mr. Smith was the reputed author of the Idaho test-oath, which had disfranchised all the Mormons in that Territory. He subsequently became an Associate Justice of Utah.

believed, added to their strength unfairly. The railroads brought in loads of men "to vote the Gentile ticket," and it was known that many of these were not registered voters. That some of them, by the connivance of registrars and judges of election, succeeded in registering and voting, was all but mathematically demonstrated.

The day of the election was the 11th of February. When night came and the preliminary count was completed, it was found that the Liberals had carried the city by a majority of over four hundred. A pandemonium of rejoicing followed, such as the Junction City had never known. Bonfires, rockets, cowbells, horns, and all the noisy and grotesque paraphernalia of such occasions were brought into requisition to celebrate the victory and give vent to the extravagant delight of the victors. The fact—almost as glaring as the torches and pyrotechnics—that the election had been won by fraud, did not seem to weigh a feather with the jubilators or dampen in the least their enthusiasm.

The highest number of votes cast for any one candidate was one thousand one hundred and forty nine, received by the Liberal Alderman from the third municipal ward. His opponent received six hundred and ninety votes, making the former's majority four hundred and fifty-nine.

The Mayor-elect, addressing the crowd that marched in procession to his residence to congratulate him on his election, stated that the spell [of Mormon rule] was broken, and that the Liberal party would now show their opponents that it knew something of the science of government. He expressed himself as in favor of public improvements, and predicted a glorious future for Ogden.

The Liberals were as good as their word, so far as material improvements were concerned; though they well-nigh bankrupted the city to produce them. Morally their administration was a failure. Within two years from the time they took control, Ogden became, as to its principal business streets, one vast bagnio and gambling hell. Licensed vice ran riot, flaunting its brazen face before the downcast eyes of modesty and virtue. Respectable peo-



Yours Truly  
Wm Driver



ple of all classes felt outraged, and finally Mormons and Gentiles combined in a thunderous protest against the iniquity, and succeeded at a subsequent election in wresting from the grasp of the spoilers the reins of the oppressed municipality.

The next important political event in 1889, was the general election in August, when the members of the Legislature and the officers of the various counties were chosen. It fell upon the 5th of the month, and was lively but peaceful; both parties polling their full strength. Ogden City was again carried by the Liberals, though with two hundred less majority than before. The People's party polled twenty more votes than in February. The Liberals were disappointed in not carrying Weber County and sending "Kentucky" Smith to the Legislature. He was defeated by Hon. C. C. Richards, whose majority was three hundred and fifty. The entire county ticket was elected by the People. The Liberals, however, sent Hon. J. N. Kimball to the Legislature from the Fourth Representative District.

In Juab County the People's candidates for the Legislature were elected, but their county ticket was defeated by a coalition of Liberals and Independents; the latter disaffected members of the People's party. Summit County, as usual, went Liberal by an overwhelming majority. In other places the general result was similar to that of the election held two years previously. Following is a list of those elected to the Legislature:

## HOUSE.

## PEOPLE'S PARTY.

James T. Hammond,	Heber Bennion.	J. A. Mellville,
Joseph Howell,	Thomas W. Russell,	C. M. Lund,
William M. Lowe,	William Creer.	William K. Reid,
Josiah M. Ferrin,	S. R. Thurman,	W. E. Robinson.
Joseph R. Porter.	L. S. Wood,	William P. Sargent.
James Sharp,	Lycurgus Johnson,	W. T. Stewart.

## LIBERALS.

J. N. Kimball.	W. H. Smith,	A. L. Williams,
E. P. Ferry.	Frank Pierce,	C. E. Allen.

## COUNCIL.

## PEOPLE'S PARTY.

Joseph Barton,	F. S. Richards,	W. A. C. Bryan,
C. F. Olsen,	William G. Collett,	W. H. Seegmiller,
Charles C. Richards,	John E. Booth,	R. C. Lund.
	Abram Hatch,	

## LIBERALS.

Edward Benner,	William C. Hall.
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Thus the Liberals elected eight members of the Legislature of 1890; a gain of three over their number in the Legislature of 1888.

What they considered their greatest cause for rejoicing was that at this election they cast a majority of forty-one votes at Salt Lake City. Indescribable was their joy when this fact became known. The Ogden demonstration was by comparison a bagatelle. Bonfires were kindled in the streets, and when the supply of tar-barrels and other combustibles was exhausted, carriage steps were torn up and store signs pulled down, to feed the flames lighted by the exultant revelers, some of whom wanted to set fire to buildings, to create a conflagration commensurate with their ecstasy. Their jubilation on that night in August when Judge Powers and others of their leaders addressed them, announcing what was and predicting what soon would be, was scarcely less than their rejoicing six months later when they realized the fulfillment of the prophecy and rioted in the success that had been promised them.

That the Liberal majority of forty-one was real, in the sense of being legal, was much doubted by their opponents. It was charged that impersonators of dead or absent voters, as well as soldiers from Fort Douglas, had been allowed to cast their ballots, and that this was the basis of the Liberal predominance. Whatever the facts in the case, the leaders of that party now went to work, laying their plans for the capture of Salt Lake City in February.

The Utah Commission, in its annual report to the Secretary of the Interior—Hon. John W. Noble—September 23, 1889, repeated its former recommendations for legislation by Congress, and added new ones which, if enacted into laws, would have made of Utah a

veritable slave pen, in which Mormons, monogamous and polygamous, would have been stripped of every right dear to freemen; with only the privilege left to breathe and pay taxes. One of the suggestions of the Commission was that Congress consider the advisability of providing for Utah a statute similar to the Idaho test-oath law, disfranchising Mormons for their Church membership. Another suggestion was that the Mormons be debarred from the privileges of the homestead laws. The report referred to the recent Liberal victories; denied, though not very emphatically, that frauds had been committed at the Ogden election, and defended the course pursued by the Commission in appointing, wherever possible, the majority of the registrars and judges of election from the ranks of the minority party. This policy—designed to “make polygamy odious”—had had “the most satisfactory results, as evidenced by the steady increase of the anti-Mormon vote,” and the abandonment of the open practice of polygamy and unlawful cohabitation. The number of convictions for sexual offenses against the laws of Congress in the District Courts of the Territory since September 1, 1883, was given as three hundred and fifty-seven, with forty-seven sentences suspended. Only six of the convictions were for polygamy and bigamy, the others being for unlawful cohabitation, adultery and fornication. The report predicted dire results to the Gentiles if Utah became a state, and closed by advocating the vigorous enforcement of the laws and their improvement by amendments for the more effectual stamping out of polygamy.

Opposed to this document, which was signed by Messrs. Godfrey, Williams, Robertson and Saunders, was a “minority report” by General McClernand, who disagreed entirely with the other Commissioners, maintaining that existing laws against polygamous practices were working well enough and that further aggressive legislation trenching upon civil and political privileges and religious convictions, would be injurious rather than beneficent.

Following the report of the Utah Commission, came that of Governor Arthur L. Thomas, also to the Secretary of the Interior.

It bore the date of October 20, 1889. It began by stating that the estimated population of the Territory was two hundred and thirty thousand, divided as follows:

Beaver	-	-	-	-	-	5,300
Box Elder	-	-	-	-	-	8,480
Cache	-	-	-	-	-	19,120
Davis	-	-	-	-	-	6,610
Emery	-	-	-	-	-	5,540
Garfield	-	-	-	-	-	2,120
Iron	-	-	-	-	-	4,240
Juab	-	-	-	-	-	4,800
Kane	-	-	-	-	-	5,300
Millard	-	-	-	-	-	4,505
Morgan	-	-	-	-	-	2,120
Piute	-	-	-	-	-	3,280
Rich	-	-	-	-	-	2,120
Salt Lake	-	-	-	-	-	60,000
San Juan	-	-	-	-	-	400
San Pete	-	-	-	-	-	16,400
Summit	-	-	-	-	-	9,420
Sevier	-	-	-	-	-	5,800
Tooele	-	-	-	-	-	5,950
Uintah	-	-	-	-	-	2,850
Utah	-	-	-	-	-	23,760
Wasatch	-	-	-	-	-	3,710
Washington	-	-	-	-	-	5,300
Weber	-	-	-	-	-	22,875
Total	-	-	-	-	-	230,000*

\* Of the 143,962 persons in Utah in 1880, 99,969 were natives of the United States, 80,841 of whom were born in Utah. Since 1880 the foreign born population had been increased by Mormon immigration, as follows:

1881	-	-	-	-	-	2,233
1882	-	-	-	-	-	2,693
1883	-	-	-	-	-	2,462
1884	-	-	-	-	-	1,799
1885	-	-	-	-	-	1,549
1886	-	-	-	-	-	1,544
1887	-	-	-	-	-	1,027
1888	-	-	-	-	-	1,419
1889	-	-	-	-	-	1,368
Total	-	-	-	-	-	16,094





*George Drimhall*



The Governor pointed to the fact that the Mormon people were "quietly preparing for denominational schools" in which their children might be taught Mormon theology in addition to the ordinary branches of education.\* This argued, in his opinion, that the Mormon Church was inimical to the public school system. The force of the argument was broken by the admission that all the other churches in Utah—Baptist, Catholic, Congregational, Methodist, Presbyterian, Protestant, Episcopal, and Swedish Lutheran—had denominational schools.

Coming to the subject of "the boom," the Governor said:

During the past year the people have enjoyed unusual prosperity, the influence of which has been felt all over the Territory. In the principal cities and counties there has been phenomenal prosperity. Property has rapidly advanced in value and business has correspondingly increased.

In Salt Lake City and Ogden, a large number of new and valuable buildings have been erected. There has been a constant tide of immigration pouring into these two cities, enough to effect in Ogden a complete political revolution. The people of this rapidly growing city are active, persevering and industrious, and deserve the success which has come to them.

It is expected that a like political revolution will take place at the municipal election to be held in Salt Lake City in February next. If this result is accomplished, it will be because of the vigorous new element which is making its presence felt in the city, and is putting new life into all the avenues of business.

The Governor did not believe, however, that the Mormon power

\* This had reference to a movement begun early in the summer of 1888, in June of which year President Willford Woodruff, as Chairman of the Church Board of Education, had issued to the authorities of the various Stakes of Zion a circular letter advising the appointment of boards of education to take charge of and promote the educational interests of the Latter-day Saints. Said the letter in question:

"Religious training is practically excluded from the district schools. The perusal of books that we value as divine records is forbidden. Our children, if left to the training they receive in these schools, will grow up entirely ignorant of those principles of salvation for which the Latter-day Saints have made so many sacrifices. To permit this condition of things to exist among us would be criminal.

"The desire is universally expressed by all thinking people in the Church, that we should have schools where the Bible, the Book of Mormon, and the Book of Doctrine and Covenants can be used as text books, and where the principles of our religion may form part of the teaching of the schools."

was at an end in Utah. Outside of Salt Lake City and Ogden—where, according to his statement, the Gentiles owned more than half the real property—and the mining camps and small railroad towns, the Mormons were still in the majority. In twenty-three of the twenty-four counties, and in 253 of the 278 election precincts, the Gentiles were in the minority at the last election. The Mormons were mostly agriculturists; not so the Gentiles. The former owned most of the land and water, and hence they owned Utah.

“The present attitude of the Mormon people” was stated in substance to be a determination to adhere to polygamy, in which they sincerely believed, and to obey their Church leaders rather than the laws of Congress enacted against what they considered a vital part of their religion. They were industrious, frugal and easily governed; a firm religious enthusiasm being their leading characteristic. The report cited the various remedial measures suggested for the settlement of the Mormon question, and expressed the opinion that any temporizing policy which left the Church in a position to control the politics of the Territory was only delaying the final settlement.



Geo. M. Scott



## CHAPTER XXVI.

1889-1890.

THE LIBERALS LAY THEIR PLANS TO CAPTURE SALT LAKE CITY—THE METHODS BY WHICH THEY SUCCEEDED—MORMON ALIENS REFUSED NATURALIZATION—A TYPICAL CASE OF “BLOOD ATONEMENT”—LAWLESS ACTS OF LIBERAL REGISTRARS—INDICTMENTS FOR POLITICAL EFFECT—THE REGISTRATION TRAIN—FEBRUARY, 1890—THE CITY GOES LIBERAL—THE FREE SCHOOL ELECTION—HOW A LIBERAL JUDGE OF ELECTION MANUFACTURED A MAJORITY FOR HIS PARTY CANDIDATE—JUDGE ZANE RIGHTS THE WRONG—THE AUGUST ELECTIONS—THE INDEPENDENT WORKINGMEN’S MOVEMENT—A LIBERAL VICTORY SPOILED.

WITH what confidence the Liberal party, after its victories in February and August, 1889, predicted the political fate of Utah’s capital, has been shown. The majority of forty-one votes cast by the adherents of that party at Salt Lake City, was made the basis of a prophecy that the municipal election of February, 1890, would see the reins of government in the chief “City of the Saints” pass from Mormon to non-Mormon hands. The makers of the prophecy were determined to have it fulfilled, and forthwith began working to that end. How to retain and swell their slight majority—the bona fide existence of which was not conceded by their opponents—how to prevent any increase in the voting strength of the People’s party and at the same time add to their own numbers upon the registration lists, was now their paramount aim and care.

The rather damaging admission made by the main body of the Utah Commission, that their policy of appointing the majority of the registrars and judges of election from the ranks of the Liberals, had had “the most satisfactory results, as evidenced by the steady increase of the Anti-Mormon vote,” was, of course, an unintentional impeachment of those officials. In the absence of any motive, it is hardly sufficient to constitute a confession or an accusation on the part of

the Commissioners. They meant that the discrimination they had practiced in favor of the minority as against the majority party, had helped to "make polygamy odious," and that converts to Liberalism had been the result. But they builded better than they knew. Much of "the steady increase" so satisfactory to their souls, was subsequently shown to be due to the fraudulent practices of some of their appointees.

The autumn and early winter months witnessed the utmost activity on the part of both the political organizations that were about to contest at the ballot box for the official control of Salt Lake City. Political clubs were formed in the various wards, the principles of civil government were taught and discussed, campaign songs were composed and sung, processions paraded the streets, orators indoors and out of doors fired the heart of the multitude, until, on either side, an unprecedented interest and enthusiasm were awakened. The city—the Territory had never seen anything like it.

General Patrick E. Connor, "the father of the Liberal party," was made its nominal leader in this campaign. The honor, however, was but titular. The real leader was that skilled politician and brilliant orator, Judge Orlando W. Powers. He had been placed in charge of the organization before the August election of 1889, and the Liberals now looked to him for guidance in this the most important contest in their history.

The forces of the People's party were marshalled and disciplined under the direction of Hon. F. S. Richards, assisted by Lieutenant R. W. Young and others. Each commander had numerous aides, many of them officers of sub-organizations.

Both sides were splendidly equipped. Most of the clubs were handsomely uniformed. There were flags and banners galore.\*

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\* Hon. John T. Caine sent from Washington an American flag, presented with his compliments to the People's political club of the Eighteenth Ward, in which the Delegate, when at home, resided.

One of the Liberal banners was bestowed by citizens of Chicago. It was of white silk and bore the legend: "American Rule—1890."



Several of the Liberal sub-organizations bore the names of private individuals, enthusiastic supporters of the party's interests.\*

The first grand parade was by the Liberals on the night of the 2nd of November. It was a fine display. About two thousand men were in line, most of them uniformed and all bearing torches.† Judge Goodwin, in one of his editorial prose poems, thus commented on the event in the next issue of the *Tribune*:

When, after days of heat and prostration around a rocky promontory, the breeze grows fresh and the combers from the deep sea come rolling in to break in fury against the headland, all things, animate and inanimate, seem to realize that a storm is on the

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\* The Moritz Huzzars, the Denhalter Rifles, Scott's Zouaves and the P. H. Lannan Cadets. were among these sub-organizations.

† The Liberals had intended to parade on the evening of October 21st, but General Connor had postponed it owing to the inclemency of the weather. The *Tribune*, announcing the postponement, said they would have it on November 2nd, "if weather permits." This incident gave rise to the first campaign song of the season. It was published in the *Herald* over the *nom-de-plume* of "Gideon," and ran as follows:

.. IF THE WEATHER PERMITS..

Tune—"Red, White and Red."

The Liberals one evening postponed their parade,  
Because of the weather they felt much afraid.  
The fact of the matter their "Gineral" admits,  
But they'll have it hereafter, "if weather permits."  
Hurrah, hurrah, "free water" they cry:  
But they're not very fond of it, even when dry.  
Hurrah, hurrah, free whiskey they'll try,  
But as for "free water," that's all in your eye.

The Powers that be and the Connors that are,  
Their colonized legions have marshalled for war.  
If they get in office, oh wont we get fits!  
And no doubt they will, "if the weather permits."  
Hurrah, hurrah, they'll never get in:  
We'll vote for free water, but not for free gin.  
Hurrah, hurrah, the People will win  
The battle for freedom about to begin.

Another postponement, I'm really afraid,  
Awaits the postponers of Patrick's parade.  
'Twill happen this winter when, broken in bits,  
They'll put off their triumph till "weather permits."

march out at sea and that soon it will be roaring against the devoted shore. Then everything is made secure, then the sea eagle turns his flight inland, then the stormy petrel, exulting over the approaching storm, poises her wings and goes to meet it. Last evening the breeze freshened, and a few of the waves raised by an approaching whirlwind came dashing in. Utah has long been a rocky promontory. It has been a moral storm centre. For two score years it has been reckoned a coast so dangerous that the prudent mariners have been headed away from it; but at last the signals have come of a something which will clear the air, and though the shore may be rocked by the storm, all know that when it shall have passed away, the land will be better for the visitation. Leaving metaphors

Hurrah, hurrah, there's a colder day yet.  
 And the carpet-bag party is bound to get wet.  
 With Connor their captain and Powers their pet,  
 They'll reap a disaster that none will regret.

They call us prieststridden, but what shall we say  
 Of that tyrant, the tripod they trembling obey?  
 They'll vote as they're told when the *Tribune* ring sits,  
 And they won't vote at all unless *Tribby* "permits."  
 Hurrah, hurrah for the People! Three groans  
 For the party whose conscience Pat Lannan still owns.  
 Perhaps it is "treason" to talk in such tones;  
 But they live in glass-houses and shouldn't throw stones.

They prate of dry seasons, and promise more rain  
 If they are elected, but fail to explain  
 How a cloud without moisture—a cow without teats,  
 Can let down her milk, e'en though Powers "permits."  
 Hurrah, hurrah, "free water" they cry,  
 But when it looks threatening, see how they fly!  
 Their promise is pie-crust: when seasons are dry,  
 They can't tap the heavens—they won't even try.

They'd ride us to death if they once held the rein;  
 Tooele and Ogden they've stretched on the plain.  
 Unless solid Gentiles are losing their wits,  
 They'll break with the boodlers while "weather permits."  
 This winter, 'tis rumored, their fight will begin  
 By calling on Congress our forces to thin;  
 And if they are baffled—they boast of the sin—  
 They'll steal the election but what they'll get in.

They'll say we are "traitors" for singing this song;  
 The words are all right, but the tune is all wrong.  
 But we'll sing what we please, though their "union" it "splits,"  
 And they'll dance to our music, if lameness "permits."

aside, the display last night was a new proof that Salt Lake City is being rapidly Americanized. Whatever may be the result in February, it is clear that this spot can never again be as it was only a short time ago. \* \* \*

It is clear that the tide is rising here very rapidly, and the thought that quickens every heart is that the heart of the Nation is strained to catch the first word of the watchman when he shall respond to the call, "What of the night?" Nature seemed in full accord last night with the marching columns. The moon was superb, and was sweeping through the clouds towards the clear west, as though a symbol to the men below that after a little more all the shadows would be past. The grandest feature of the moving picture last night was that there was nothing but joy in the hearts of the men in the line. If a fair prospect of victory seemed to shine upon their eyes, the thought that warmed and cheered was that it would be a double victory if achieved—a victory for the Liberals, and, though they cannot see it yet, a victory for the men who are opposing the Liberals. This is true, for this Territory cannot much longer remain un-Americanized. It must fall into the procession; it must, while enjoying the blessing, also bear the responsibility and perform the duties of an American Territory.

The second grand parade of the Liberals occurred on the evening of the 29th of November. It was an imposing spectacle, the most splendid of its kind that Utah had witnessed.

The parades of the People's party came later. As spectacles they were equally magnificent with those of their opponents, and the marchers were even more numerous.

The registration of voters for the election began on November 4th. The city registrar was Colonel Henry Page, chief clerk of the Utah Commission. The following named persons were his deputies:

First Municipal Ward	-	-	-	H. S. McCallum
Second " "	-	-	-	E. R. Clute
Third " "	-	-	-	J. R. Morris
Fourth " "	-	-	-	R. D. Winters
Fifth " "	-	-	-	Louis Hyams.

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Hurrah, hurrah for the Red, White and Blue,  
 The flag of our country, that "backward" ne'er "flew;"  
 Hurrah, hurrah for all patriots true,  
 But not for Pat Connor's piratical crew!

This song was sung with great gusto by the People's party, and, strange to say, was more or less popular with the Liberals. Judge Powers was addressing a meeting of his partisans one evening, telling them what they would do in February, when a voice bawled out, "If the weather permits." Down came the house, and the Judge laughingly acknowledged "a palpable hit." Another Liberal gathering was closed by General Connor with the good-natured paraphrase, "Pat Connor's piratical crew is now dismissed."

All were strong Liberal partisans. So intent were the majority of the Commission upon "making polygamy odious," that they failed to give the People's party even a minority representation among the registration officers. Hon. C. W. Penrose, who rendered signal service to his party in this campaign, says, in a manuscript sketch of it:

It was evident, as soon as the work of registration commenced, that it was to be done in the interest of the Liberal party. Every possible obstacle was thrown in the way of the registration of the People's party voters. These had been previously ascertained by a systematic plan of inquiry which comprehended every house on every block in the city, instituted and paid for by the Liberal managers under Judge Powers. The registrars were in constant communication with the Liberal central committee and at their dictation excluded or entered the names of the voters on the registration lists. Houses where People's party voters were known to reside were in many instances unvisited, while adjoining dwellings where Liberals lived were carefully canvassed. Liberals were registered at hotels, restaurants, saloons, stores, and on the streets, while People's party voters were refused registration except at their homes, and the registrars took occasion to call, if at all, at a time when the male occupants were known to be absent at their daily employment. And the same registrars who refused to register them except at their homes, either declined to state when they would call, or if they made an appointment, in many instances they failed to keep it.

Some of those whom the registrars refused to enroll were alleged to be "colonizers" whom the managers of the People's party had induced to come into the city from the surrounding settlements and vote at the municipal election. As soon as the cry of "colonization" was raised by the Liberals, the central committee of the People's party caused a notice to be published and distributed, to the effect that they considered as legal voters only such male citizens, over twenty-one years of age, as had resided in the Territory six months, and in the precinct where they then had their homes one month, and who could truthfully and conscientiously subscribe to the oath required by law. They warned all transients, all persons staying in the city temporarily, not to attempt to register and vote at the approaching election, on pain of prosecution.

Transients—commercial travelers and others—continued to register, however; that is, if they were known to be in sympathy with the Liberal cause. No other transients were permitted to enroll their names.



Charles W. Penrose





A "labor bureau" was established at the headquarters of the Liberal party—for what purpose, will be better understood after reading the following affidavit:

TERRITORY OF UTAH, }  
 County of Salt Lake. } ss.

Richard Iversen, first being duly sworn says, that I live at Levan, Juab County, Utah; that on or about the 21st day of October, 1889, one Tony Christiansen, a resident of Levan, aforesaid, approached me and said he understood I was contemplating going to Salt Lake City, and that he wanted me to call around to see him to get some advice before going; that I did not call around to get the advice proffered, but subsequently, to-wit: on the 28th day of October, I met said Christiansen in Nephi, in Juab County, Utah, and he said to me, when you get up in Salt Lake you want to vote the Liberal ticket, and thereupon wrote a note in words and figures as follows:

NEPHI, October 28, 1889.

*O. W. Powers, Esq.,*

DEAR SIR:—The bearer of this wants to vote, look after a job for him.

TONY, Levan, Juab County, Utah.

Which was written in my presence by said Christiansen and signed by one John Witbeck, a resident of Nephi, and a prominent Liberal of that town: that this note was to be presented to Powers, the chairman of the Liberal committee in Salt Lake.

RICHARD IVERSEN.

Subscribed and sworn to before me this 1st day of November, 1889.

RICHARD W. YOUNG,  
 Notary Public.

There were many residents of Salt Lake City, Mormons and non-Mormons, who, born abroad, had not been naturalized. To enable these, or such of them as could prove themselves worthy of the privilege—to cast their votes at the coming election, Associate Justice Anderson held special sessions of court at Salt Lake City, to hear and pass upon applications for citizenship. These sessions began on the 7th of November. Mormons and Gentiles thronged the scene, many of those seeking to become citizens chaperoned by attorneys representing their respective political parties. Mormon applicants were questioned as to their belief in polygamy. If they admitted a belief in it, they were objected to as "men of immoral character," and the Court was asked to deny them naturalization. As a measure of retaliation Gentile applicants were questioned con-

cerning sexual practices outside the marriage relation. Thereupon a commotion arose, the Liberal attorneys angrily asserting that such inquiries were superfluous and absurd. One of them went so far as to say that nine hundred and ninety-nine men out of every thousand practiced fornication, and that no one ought to be barred out on that account. This same attorney contended that Mormons should be excluded simply because they were Mormons.

Judge Anderson at first declined to take this view. "The law of the land," said he, "requires that a man shall be of good moral character and attached to the principles of the Constitution; the fact of a man's religious belief, or that he is a member of a church in good standing, is not a ground for exclusion."\* He changed his attitude, however, within the next three weeks, and took the same position as that taken by the Liberal attorneys.

\* It was on November 9th, when John Moore was being examined as to his qualifications for citizenship, and again on November 11th, when Fred W. Miller was under examination, that objections were raised to the naturalization of members of the Mormon Church. The objector was Mr. Joseph Lippman, a prominent Liberal, formerly city editor of the *Salt Lake Tribune*. He stated that he expected to show that there was a ceremony of that Church connected with the Endowment House that required every Mormon to swear that he would avenge upon the United States the blood of Joseph Smith and all other Saints that had been killed. It was because of this oath—one hostile and treasonable to the Government—that he held that no Mormon should be admitted to citizenship.

Thereupon Judge Anderson deferred passing upon the applications of John Moore and others, and announced a continuance in their cases until the 14th of November.

On that day began, before Judge Anderson, an investigation into

\* Judge Anderson referred to the prohibition law of Iowa, which he said he, with many others, believed to be wrong and he had worked for its repeal. But he had never heard a proposition to exclude a man from any political right or privilege because he was opposed to the law, so long as he did not actually violate the law.



the subject of the alleged Endowment House oath referred to by Mr. Lippman. The court room was crowded, mostly by non-Mormons, eager to drink in the details of the anticipated exposure. Messrs. W. H. Dickson, R. N. Baskin, Parley L. Williams and Joseph Lippman represented the Liberal party in these proceedings, while Messrs. Le Grand Young, James H. Moyle and Richard W. Young appeared for John Moore, whose application for citizenship furnished the test case upon which the question was to be decided.

The principal witness for the plaintiff was a deaf and partly daft old man named Martin Wardell, who told a harrowing tale of blood purporting to show how "the Mormon death penalty, Blood Atonement," was visited upon apostates. He cited the case of a man named Green, who was killed, witness said, about twenty miles west of Green River in the year 1862. Bill Hickman and others did the killing, which was directed by William H. Dame, captain of the company in which they were crossing the plains, coming to Utah. After this, Wardell, according to his statement, went through the Endowment House and took the oath against the Government. Five years later he left the Church.

The investigation went on from day to day, until several weeks had been consumed. The case of John Moore was entirely lost sight of; everything that would militate against the Mormons, or the People's party, being fished up from the all but forgotten past and dragged into court to subserve the Liberal cause. With all this deep-sea dredging, however, nothing worse was brought up than the blood-curdling Wardell story; and that, with all akin to it, was subsequently shown to have no foundation in fact. The most intense feeling was created against the Mormons, and the situation of their attorneys, surrounded by a hostile throng, with scarcely a friend in the court room—which resounded with jeers and guffaws whenever a point was scored against their people—was unpleasant in the extreme.

When it came their turn to introduce testimony, they brought it forth in abundance to disprove the horrible stories with which wit-

nesses on the other side had regaled the court and the spectators. This testimony was given by both Mormons and Gentiles. The persons named by Wardell as having witnessed the murder of Green, were sent for and came from different parts. All testified that no such event had taken place. Wardell's son George, a non-Mormon, who, according to his father's story, had driven the murdered man's team, said:

I am the son of Martin D. Wardell; he is in the court room; I came with him in 1862, in Captain Dame's company; I am not a member of any church; do not believe in Mormonism; remember crossing Green River; there was no man killed in our train; father crossed the plains only once; if there had been a man named Green killed I would have known it; I heard nothing of the kind; I did not drive Green's wagon, nor hear of it; I only drove my father's wagon; the Church gave us the wagon at Florence, Nebraska, for us to come in, and I left the wagon in the Tithing Office; never heard father relate this story before; we came through late in the fall of 1862; do not remember Billy Williams or George Snyder; no man from our camp was killed; never heard of any man being killed on the trip across the plains.

Wardell's wife and daughter gave similar testimony. The former had left him on account of ill-treatment, and the latter stated that he was visionary and imagined strange things that he maintained to be true.\*

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\* The last shred of the torn and tattered tale was annihilated by the following affidavit from the identical man—William Green—who was said to have been "blood-atoned" twenty-eight years before. He was a seceder from Mormonism, and a Liberal:

TERRITORY OF UTAH, }  
 County of Utah. } ss.

William Green, being duly sworn, on his oath, says: I am an Englishman by birth, fifty-five years of age, and now a resident of Spanish Fork City, Utah County, Territory of Utah. I crossed the plains in 1862 in Captain Dame's company; I knew a man by the name of Wardell; he crossed the plains and came to Utah in the same company as I did; we traveled together until the company arrived at a point near William Kimball's ranch in Parley's Park, where I left the train ahead of the company, being anxious to meet my wife, who was then in Salt Lake City, she having traveled over the plains the same season with Captain Hoyt's company.

I have lived in Salt Lake City and Spanish Fork City since I came to Utah. I was the only man by the name of Green, that I know of, who came over in Captain Dame's company. No man was killed in that company by the name of Green, or of any other name, nor did I ever hear of any rumor of any one being killed in said company, until I

Some of the foremost Mormons, including several of the Apostles, were summoned to testify concerning the doctrines of their Church. They showed that there was nothing treasonable in those doctrines, and nothing antagonistic to the Government; on the contrary that the Latter-day Saints believed the Constitution of the United States to have been inspired of God, and that the laws made in pursuance thereof were binding upon all people living under their dominion; that the laws of the Church are only ecclesiastical, and the extreme penalty for the infraction thereof is the excommunication of the offending church member. They also testified that there was nothing in the Endowment ceremonies in the least degree hostile to the Government; that required any obligation to practice polygamy, or that interfered in any manner with man's free agency.\*

During the proceedings one of the witnesses—Elder C. W. Penrose—was asked: "How many wives have you?" Deeming the question irrelevant, he refused to answer it, and was committed for contempt. He remained in the Penitentiary for about a week, when, the investigation having closed, he was set at liberty.

On the 25th of November lengthy arguments were made on both sides, and five days later Judge Anderson rendered his decision. It denied the applications of John Moore and Walter J. Edgar for citizenship, on the ground that they had been through the Endowment

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saw the statement of Wardell recently in the papers. I am not a Mormon nor have I been for several years. I am not a believer in Mormon theocracy, but do believe it wrong to have any religious sect or body of people assailed by falsehood.

WILLIAM GREEN.

Subscribed and sworn to before me this 28th day of November, 1889.

WILLIAM CREER,

[Notarial Seal.]

Notary Public.

This affidavit was not secured (Green's whereabouts being unknown) until after the close of the proceedings before Judge Anderson. The document was signed, however, two days before the judge rendered his decision, and published in the Salt Lake City papers.

\*The Mormon Church authorities emphasized these statements in a solemn declaration published over their signatures soon after the close of the investigation.

House and there taken an oath of hostility to the Government. It also denied the applications of Fred W. Miller, Henry J. Owen, John Burg, Charles E. Clissold, Nils Anderson, Carl P. Larsen, Thomas M. Mumford, John Garbett and Arthur Townsend, because they were members of the Mormon Church, though they had never been through the Endowment House, and had never been accused of taking any oath or obligation against the Government.

Judge Zane, in whose district these proceedings took place, announced from the bench that Judge Anderson's decision would be respected "for the present," and that membership in the Mormon Church would disqualify an alien for citizenship. Many young men, born Americans, who had just attained their majority, and others of foreign birth who had completed the five years' residence required by law, were thus prevented from registering for and voting at the February election.

Encouraged by these proceedings, the Liberal registrars pursued so partisan a course that the chairman of the Utah Commission, who, with his associates, was absent from the Territory, was communicated with by telegraph and asked to interfere. Three of the Commissioners came to Salt Lake City and heard complaints against the registrars, who were charged with discriminating against voters of the People's party, and in favor of those belonging to their own political organization. The charges were substantiated, some of them by the admissions of the registrars themselves, but the Commission would not remove them.\* They were acquitted with the injunction that they should allow no bias, prejudice or partisanship to influence them, but should administer justice to all alike.

Another step taken by the registrars in excess of the law was to address notes like the following to members of the People's party,

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\* They were charged with refusing to correct names improperly changed on the lists, with exercising judicial functions in passing upon the qualifications of citizens and refusing to register them, with neglecting to call at the houses of members of the People's party and then refusing to register them elsewhere, and with registering Liberals wherever they could find them, at saloons, hotels, business houses, on the street and elsewhere.



Chas. Esau



against whom gossip may have wagged her tongue, or suspicion filed an accusation :

SALT LAKE CITY, December, 1889.

*Heber M. Wells.*

DEAR SIR : Owing to certain information coming to me regarding your disqualification to remain longer on the registry of the Fourth precinct, I hereby notify you that unless you appear before me during the week commencing the 23rd inst., and requalify by retaking the oath and subscribe to it, your name will be stricken from the list.

Very respectfully,

R. D. WINTERS, Registrar Fourth Precinct.

Mr. Wells was known in the community to be a native born citizen, unmarried, a young man of prominence holding the office of City Recorder, and commonly mentioned as a probable candidate for high municipal office. He made the following reply :

SALT LAKE CITY, UTAH, December 21, 1889.

*R. D. Winters, Esq., Registrar Fourth Precinct.*

DEAR SIR : I beg to acknowledge receipt of yours without date, notifying me that owing to certain information coming to you regarding my disqualification to remain longer on the registry of the Fourth precinct, you would strike my name from the list unless I appear during the week commencing the 23rd inst., and requalify by taking and subscribing the oath anew.

I am not advised as to the character of the information you refer to, but I now notify you that any and all information alleging or intimating anything other than that I am a native born citizen of the United States, over the age of twenty-one, and qualified in every respect to register and vote, is utterly and totally false : and I hereby warn you that if you strike my name from the list upon any pretext whatever, you do so at your peril, and I shall immediately begin proceedings against you to test in the courts your right to exercise what I consider a high-handed and impertinent assumption of authority.

Respectfully,

HEBER M. WELLS.

A writ of mandamus was applied for in the Third District Court to compel two of the registrars—E. R. Clute and J. R. Morris—to perform their duty and to test their claims to the exercise of judicial functions. The applicants were W. J. Bachman, Henry Cumberland and J. H. Back, who had been refused registration on various pretexts. Judge Zane gave a hearing on the 17th of December. He decided that the registrars were ministerial officers, but that they had the right to enquire whether a person was guilty, or had been con-

victed of certain offenses, and this made their office partly judicial. In this they had a certain amount of discretion, but up to that point they had none. If a registrar refused a man who had the right to vote he did so at his peril. The Utah Commission should see that the officers did their duty faithfully. The mandamus in all cases was denied.

It was now the latter part of December, and the time for closing the registration was drawing nigh.\* Still fearing, notwithstanding all that had been done, that they had not enough votes to carry the election, certain Liberals, during the last week of the registration, set to work to execute a scheme of fraud, one of the most audacious ever concocted in the interest of a political party. On the Rio Grande Western Railroad, between Salt Lake City and the Colorado line, gangs of laborers were employed, some of them upon recommendations given by the Liberal "labor bureau" before mentioned. Between the previous midnight and day-break of December 21st, two men answering the description of two of the deputy registrars of Salt Lake City, with a third man as their assistant, went down the road upon a special train, under pretense of being a hunting party. Hunters they were, but it was human game they were seeking. They were well supplied with whiskey, cigars and registration blanks, and by means of the former procured the filling up of the latter, with signatures of laborers at various points. The following affidavils are samples of a large number obtained giving the particulars of this midnight expedition:

TERRITORY OF UTAH, )  
County of Salt Lake. ) ss.

C—— Y—— being duly sworn, says that during the month of December, 1889,

\* The registration closed on the 28th of December. It was as follows:

First Precinct	-	-	-	-	1,388
Second Precinct	-	-	-	-	2,790
Third Precinct	-	-	-	-	1,202
Fourth Precinct	-	-	-	-	875
Fifth Precinct	-	-	-	-	1,661
Total	-	-	-	-	<u>7,916</u>



he was working in a track-laying gang on the Denver & Rio Grande Western Railroad. That on or about the 22nd day of December, 1889, when the gang in which affiant was working was located and working at Pratt's Siding on the line of said railroad, and in the Territory of Utah, and during the afternoon of said day, a train composed of one passenger coach and locomotive stopped at said Pratt's Siding and one man alighted from the coach and saluted H—— G——, who was foreman of the construction train with which affiant was connected, and with said G—— returned into the coach. That the man who alighted from the coach was and is a stranger to affiant and was a rather heavy set man with a light colored moustache. That after being in the coach a few minutes both G—— and the stranger came out again and G—— walked along the track to a gang of men, and in affiant's hearing told the men in the gang to go in and get their drink and register. That the men then began to enter the coach, and one H—— F——, who was a watchman around the train, asked affiant to come in and register, whereupon affiant and said F—— entered said coach. That when affiant entered said coach he saw several men of the gang and two strangers there, one of the strangers speaking with a slightly foreign accent, and both being somewhat slightly built and dark with dark hair and moustache, the one with the slightly foreign accent being the darker of the two. That both of said strangers were sitting and in different parts of the car, the darker one having before him pen, ink, book and blanks, and the other having a demijohn of whiskey. That the blanks which one of said strangers had were similar to the one which affiant has examined which is the registration oath. That affiant with said F—— went up to where the men with the book and blanks was sitting, said stranger asked affiant his name and where he was raised, and having filled out one of said blanks, told affiant to sign the same, which he did; when said stranger said, "that is all," and said F—— then said to affiant to "keep it quiet." That affiant then proceeded through the car till he approached the other stranger, who presented affiant with a glass of whiskey. That affiant was not required to, and did not swear to or affirm the truth of the contents of the paper he signed, nor has he ever, in Salt Lake City or elsewhere in said Territory, sworn to any registration oath. That on Christmas eve said G——, in the hearing of affiant, said he would pass all the men into Salt Lake City on the last of the month of January, 1890. That at Pratt's Station, when the registry car was there, said G—— said he would pass all the men into Salt Lake City to vote at the February election. Affiant further says that he first came into said Territory April 23d, 1889, and reached Salt Lake City April 29th, or thereabouts, and remained in said city till the last of October and went out to work on the road and did not return until January 25th, 1890. That about 2 o'clock p. m., January 28th, affiant saw two men in an office in a building situated at the southeast corner of Main and Second South Streets in Salt Lake City, whom affiant believes to be the strangers whom he saw in the car at Pratt's Siding; that one of said men was sitting, having before him a number of large envelopes and him affiant believes to be the stranger who presented affiant with the glass of whiskey, and the other affiant believes to be the stranger above described as having a slightly foreign accent. That a number of men were in the room in which affiant saw said men, and in the room north therefrom another crowd of men was congregated.

G—— Y——.

Subscribed and sworn to before me this 28th day of January, 1890.

RICHARD W. YOUNG, Notary Public.

TERRITORY OF UTAH, }  
 County of Salt Lake. } ss.

C— A—, being duly sworn, says that on the 22nd day of December, 1889, he was cook on a work train at Pratt's Siding on the line of the Denver and Rio Grande Western Railroad in said Territory. That in the morning of said day a train composed of a locomotive, tender and one passenger coach, stopped near the train on which affiant was working, and after nearly all of the men connected with said work train had entered said passenger coach and come out again, and had, as affiant was informed and believes, been registered to vote at the February election in Salt Lake City, three persons besides the conductor, brakeman and engineer came from the passenger coach to the car in said work train in which affiant served meals, and were there given breakfast by affiant and his helpers. That affiant had ample opportunity for and did take close observations of said persons, and believes that he would be able to identify them under ordinary circumstances. That he has seen — — deputy registrar in Salt Lake City, many times since the 22nd day of December, 1889, and is positive in his belief that said — — was one of the three persons above referred to.

C— A—.

Subscribed and sworn to before me this 16th day of February, 1890.

RICHARD W. YOUNG, Notary Public.

TERRITORY OF UTAH, }  
 County of Salt Lake. } ss.

J— R—, being duly sworn, says that he came into said Territory from the State of Colorado on the first day of November, 1889, and went to work on the line of the Denver & Rio Grande Western Railroad and remained on said line at work, and did not come to Salt Lake City till January 14, 1890, which was the first time in ten years affiant was in said city.

That on December 22, 1889, while affiant was working in a gang about three miles west of Lower Crossing, on the line of said road, a train composed of a locomotive, tender and one passenger coach stopped on the main track of said road near where affiant was working, and the men in the gang were invited or directed into the coach. That affiant entered said coach with other men of the gang; two men were sitting, one on each side of the car with writing materials before them, and as affiant and the other men of the gang approached them, each was asked the place of his nativity and blanks were filled out and presented to each for signature. That affiant signed one of said blanks which was similar in appearance to the registration oath which he has examined. That he did not and was not required or asked to swear to the truth of the statements contained in the paper so signed by him, nor did any one else in his presence or hearing swear to the truth of the same. That further in the car was a third man who had a box of cigars and a quantity of whiskey of which he gave to affiant and to the other men. That affiant asked of the man who presented him the paper for signature what it was for, and received an answer that it was for registry for the Salt Lake spring election. That affiant never at any other time or place signed or swore to any registration oath for registration in Salt Lake City.

That the man who presented affiant with the paper for his signature was a dark

complected man with a dark moustache, and the man who presented the liquor and cigars was fair with a light moustache. That the man who presented affiant with said paper also said in affiant's hearing that the men of the gang would be sent into Salt Lake City at election time and would be treated well and would not want for anything.

J—— R——.

Subscribed and sworn to before me this 4th day February, 1890.

THOMAS W. SLOAN, Notary Public.

Most of the names thus taken were afterwards found upon the registration list of the Second Precinct, of which E. R. Clute was registrar. Hence, it was at first supposed that he was one of the "hunting party" that procured these non-resident names for election purposes. This proved to be an error. The plotters had been cunning enough to provide against a possible investigation. Mr. Clute did not go down the road. He simply enrolled the names furnished him by his fellow registrars, with whom, of course, he was in collusion.

Many of the affidavits respecting the registration train were secured by Captain John Bonfield, ex-inspector of police at Chicago, who, with a force of detectives, was employed by the People's party to ferret out the frauds that were suspected to be in contemplation. Bonfield and his men came privately to Salt Lake City, where they remained for some time, unknown and working secretly. They soon acquired all necessary information, and the exposure that followed was a bombshell in the camp of the conspirators. It all but paralyzed them for a time, but they soon recovered their equanimity.

Another *coup de main* to further Liberal plans was to procure the indictment of certain city and county officials, on trumped-up charges of conspiracy and misappropriation of public moneys. That these charges were intended to subserve a political purpose was understood at the time, but the fact was virtually conceded after the election, when the indictments were all dismissed, "for the reason," as stated by the United States District Attorney, "that it had been found that no conspiracy existed."

In order to keep the knowledge of their crooked proceedings from the public, and especially from the managers of the People's

Treasurer—J. B. Walden.

Marshal—John M. Young.

The candidates for the city council had been nominated in their respective precincts.

The People's party convention met on the evening of the 27th of January at the Fourteenth Ward Assembly Rooms. Prior to nominating its ticket the convention was addressed by Hon. F. S. Richards, who called attention to the fact that the officers to be elected were mayor, recorder, treasurer, marshal, assessor and collector, members of the city council and justices of the peace; that under the original charter of the city there were five aldermen to be voted for and nine councilors, but under the municipal incorporation act the council was to be composed of fifteen councilmen. The question had arisen as to which of those acts would govern at this election, and although the Supreme Court had passed upon the matter, it might be prudent, in addition to the nominations for councilmen and justices of the peace, to provide for five aldermen as well.

The suggestion was heeded and the following ticket was nominated:

Mayor—Spencer Clawson.

Recorder—Heber M. Wells.

Treasurer—August W. Carlson.

Assessor and Collector—John H. Rumel, Jr.

Marshal—Gilbert A. McLean.

Councilmen—William Fuller, John Siddoway, William Groesbeck, A. G. Gianque, R. K. Thomas, John G. Robinson, O. H. Hardy, Frank H. Hyde, Eli A. Folland, R. W. Young, William J. Tuddenham, J. Fewson Smith, N. W. Clayton, Joshua Midgley, F. A. Mitchell.

vinced," and gave Mr. Clute his "reward." Mr. Hyams, another registrar, had already been "rewarded" with the nomination for city recorder. Registrars Morris and Winters had been named for aldermen in their respective precincts. Mr. McCallum was the only one of the deputy registrars of Salt Lake City who was not a candidate for office at this election.



*John H. Russell*



Justices of the Peace—James W. Eardley, Thomas Hull, Ward E. Pack, Jr., George D. Pyper, William Naylor.

Aldermen—John G. Smith, P. W. Madsen, W. A. Hodges, S. P. Teasdel, Alex. McMaster.

Rousing ratification meetings followed, and these, with the grand parades that succeeded, added to the general interest felt over the coming contest at the polls.

Up to the last moment the registrars—four of them candidates for office on the Liberal ticket—continued to exercise judicial functions and pass upon the qualifications of those who were to vote for or against them at this election. Each constituted himself “a court of first and last resort,” to hear objections to the right to vote of hundreds of citizens, cited to appear and prove their own innocence of charges, unsupported by evidence, preferred against them by their judge, who was also to be their executioner.\*

They held that every man who had been a polygamist was still in that status, even though his wives were dead and he was a widower. The only way, they said, to change this status was by amnesty from the President of the United States.†

One of those rejected by this ruling of the registrars was Bishop William B. Preston, who applied to the Third District Court for a writ of prohibition to restrain Registrar J. R. Morris from further

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\* Registrar McCallum refused to allow Mr. Jesse B. Barton, an attorney of repute from Chicago, duly admitted to the Salt Lake bar, to appear in his “court” in behalf of some of those against whom objections had been filed. The objections, issued in printed form, were signed by David Webb or R. O. G. Snowell, who, however, were mere figure-heads, knowing nothing, and being required to prove nothing, against the persons they accused.

† In the case of Wm. B. Bennett, who had been fully separated from his plural wife, and having registered was prosecuted for registering illegally, and acquitted October 28th, 1889, Judge Zane had rendered a decision which included quotations from the opinion of the Supreme Court of the United States relative to this subject, one of which was: “He alone is deprived of his vote who, when he offers to register, is then in the state and condition of a bigamist or polygamist, or is then actually cohabiting with more than one woman.” Judge Zane ruled that pardon and amnesty were not intended as a means of terminating a polygamous relation.

arbitrary action in the matter, but the Court held—as the Utah Commission had held in relation to themselves—that it could not interfere. An appeal was taken to the Supreme Court of the Territory, but as that tribunal would not sit until long after the election, it was foreseen that the appeal would do no good as affecting the result at the polls.

As election day drew near, so also did most of the laborers along the line of the Rio Grande Western Railway, who had been registered by the Liberal “hunting party” in December. They came into town in squads, on foot and by rail, and took temporary lodgings in various parts. Some of them were from as far away as Grand Junction, Colorado. The city swarmed with strangers, many of whom had come to cast a vote for “American Rule” in the chief city of Mormondom, and then

“—fold their tents like the Arabs  
And as silently steal away.”

Some of them were frightened out of their intentions by placards and hand-bills posted and distributed, warning illegal voters of the penalties of the law. To counteract this fear the Liberal managers put forth the following :

#### LIBERALS TAKE NOTICE.

After a careful examination of the statutes of the United States and Utah Territory by the ablest legal counsel in Utah, it has been determined beyond controversy that persons now registered, who have resided in the Territory six months, and in Salt Lake City thirty days last past, are qualified electors. It is not necessary that a voter shall have resided six months in the Territory before the date of registration. It is sufficient if upon election day he has resided in the Territory six months and in the city thirty days. The attorneys of the Liberal committee are prepared to sustain the construction of the law as above explained, and will defend any persons voting in accordance with it.

By order of the Liberal committee.

Election day was Monday, the 11th of February. On that morning the polling places were besieged long before the time for opening. Challengers and checkers were at hand to watch the election and guard the interests of their respective parties. Many of the People's



voters found, on offering their ballots, that their names had been stricken from the lists, and they were refused the right to vote. Even after taking the oath prescribed, and presenting sworn affidavits as to their qualifications, they were refused and roughly ordered away from the polls. Several arrests were made of persons clearly disqualified, who were permitted to vote the Liberal ticket; but a syndicate had been formed to bail out all such persons, and they were promptly liberated. Some forfeited their bonds. None were punished. At the Second precinct numbers of the imported voters crowded to the polls and many, it was said, voted, while others recoiled before the challenge and withdrew.

The Liberals polled majorities for their candidates ranging from four hundred and ten to almost double that number, taking the vote for all city officers at large. Mr. Scott's majority for mayor was eight hundred and eight; Mr. Walden's for treasurer, six hundred and fifty-nine; Mr. Young's for marshal, seven hundred and seventy-three. These were among the best men on the ticket. Messrs. Hyams and Clute ran far behind; five hundred and forty, and four hundred and ten being the majorities upon which they rode into office as recorder and as assessor and collector of Salt Lake City.

The returns showed a clear majority for the People's party candidates in the Third and Fourth precincts. Representatives of that party forthwith applied to the Secretary of the Territory, the canvassing officer, for certificates of election for these candidates. The Secretary, in spite of the latest ruling of the Supreme Court of the Territory upon the subject, took the ground that the old law had governed in this election; that the members of the city council had been chosen at large and not, as the new law provided, in their respective precincts. He therefore refused the application. In fact, he had already given certificates to the Liberal candidates. The District Court was then appealed to, and Judge Zane issued a writ of mandate requiring the Secretary to issue the certificates asked for, or show cause why he should not be compelled to do so. The hearing took place on the 17th of February. Next day Judge Zane decided

that a peremptory mandamus issue requiring the Secretary to furnish the certificates. An appeal was taken to the Supreme Court of the Territory, and meantime the Secretary refused to act.

The new mayor and city council were sworn in on the evening of the 20th of February. When the certificates and bonds of the councilmen-elect were called for, Mr. R. W. Young, one of the members elected by the People's party, arose and said:

“Mr. President, I respectfully ask, on behalf of myself, M. J. Tuddenham, J. Fewson Smith, Oscar H. Hardy, Frank H. Hyde and Eli A. Folland, that our bonds be approved and that we be permitted to take the oath of office.”

MAYOR SCOTT.—“The bonds cannot be accepted, as they are not accompanied by any certificate of election, nor can the gentlemen presenting them be sworn.”

MR. YOUNG.—“We make the further request that the gentlemen presenting certificates of election from the Third and Fourth precincts be not sworn in until the appeal taken from the decision of the District Court in our favor shall be decided.”

MAYOR SCOTT.—“Not having had any official notice of the action of the court, I shall have to decline the request and allow the gentlemen to be sworn in who have certificates of election.”

The Liberal councilmen were then sworn in and took their seats.\*

The Liberals celebrated their victory with the usual boisterous enthusiasm. Judge Powers, for his services in conducting the campaign, was publicly thanked and presented with a check for ten thousand dollars.

The history of Salt Lake City under Liberal rule duplicated that of Ogden City under a similar regime. Energetic and progressive, in a material way—as the many costly public buildings and other improvements projected and executed during that period testify—the

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\* Those from the contested precincts were subsequently ousted and their opponents installed by a decision of the Supreme Court of the Territory.

new administration paid little or no attention to public morals. For a season, extravagance and corruption ran riot in various departments of the city government. The *Tribune* itself accused some of the Liberal councilmen of dishonesty. A depleted exchequer, burdensome taxation, debt amounting almost to bankruptcy—such was the legacy left by the Liberal administration to its successors.\*

The Liberals maintained that their victories in 1889 and 1890 created “the boom” experienced in these parts about that time, when real estate prices rose so abnormally and so much speculation was indulged in by the people. If this claim be allowed, then must they also be credited, or debited, with the ruinous depression that followed the swift collapse of that unwise and extravagant inflation of values.

Twice again during the year 1890, the Liberal party and the People’s party “locked horns” and strove for supremacy at the polls. At each election frauds similar to those charged against the Liberals at Ogden and Salt Lake City were committed by representatives of that party. These frauds were proved, and one at least of the wrongs was righted by representatives of the Federal Government. The perpetrators of these outrages—all the bolder to attempt such things from not having been prosecuted, they or their confreres, for past misconduct—probably thought the courts would sustain them in all that they did to overthrow Mormonism and establish an Anti-Mormon despotism upon its ruins. They were mistaken. Not all the Federal

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\* This is not intended as a wholesale arraignment of the Liberal party and its representatives, in or out of the city government. Some of the officials chosen in 1890 and subsequently were good and upright men, who did all they could to correct the evils complained of by Gentiles as well as Mormons; but being in the minority, they were powerless. Too many persons had been placed in position simply as a reward for political services, and thus a demon had been conjured up that could not be controlled. Some of the worst men in the Liberal ranks—and there are bad men in all political organizations—had been given office by those who knew not until too late how unworthy they were of public confidence. Finally, the better class of citizens—Gentiles and Mormons—coalesced, as at Ogden, in a “Citizens’ Movement,” and, having a majority at the polls, hurled the corrupt and tyrannical plunderers from power.

officials, not all the Gentiles sympathized with them to that extent. All wanted polygamy suppressed, and the Mormon political power destroyed; but all were not willing to prostitute office and authority to play into the hands of wreckers and spoilers, or sanction even by silence their acts of infamy. An incident now occurred to emphasize these facts and inscribe in letters of light the honored name of Chief Justice Charles S. Zane.

In March, 1890, a law entitled "An act to provide for a uniform system of free schools throughout Utah Territory," had been enacted by the Legislature. It directed that on the second Monday in July, and annually thereafter, school trustees should be elected in all the school districts, as follows: In each new district three trustees, one for one year, one for two years and one for three years; in each old district (where three trustees were already serving out similar terms) one trustee for three years. Exceptions were made of cities of the first class, whose population was over twenty thousand, and cities of the second class, whose population was between five thousand and twenty thousand. Each of these was constituted a school district, empowered to elect school trustees as follows: In first class cities two trustees, and in second class cities one trustee, from each municipal ward; these trustees, with the mayor as *ex officio* chairman, to constitute the educational board of the city.\*

Salt Lake City, being a city of the first class—the census of 1890 giving it a population of 52,732—was authorized to elect two trustees, one for one year, and one for two years, from each of the five municipal wards.

The People's party—confident of a majority in one or two of those wards—determined to elect a minority at least of the trustees;

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\* Each school, supported by taxation, was made free to all residents of the district between the ages of six and eighteen years. Attendance of pupils was compulsory with certain exceptions. Each district was liable to a special tax for the purchase of school sites, the improvement of the same, and the purchase, building, renting, repairing and furnishing of school houses. The schools were non-sectarian. Each educational board was to elect a superintendent, not of its own number, to have charge and control, under the direction of that body, of all public schools in the district.

believing they could do so in spite of the imported "hobo" element now regularly employed by the city government. The Liberals, starting with the advantage of having, in their mayor, the chairman of the prospective school board, were resolved upon electing all the other members.

The election took place on the 14th of July, and the Liberals scored a complete victory; polling majorities in all the five precincts and defeating every candidate of the People's party.

Such a sweeping result was accepted by the public as *prima facie* evidence of fraud. Determined to sift the matter to the bottom, the People's managers went to work to expose the infamy and punish, if possible, its perpetrators. A little inquiry revealed the fact that at one of the polling places a gross fraud had been committed, to-wit: the deliberate substitution of Liberal ballots for People's ballots, by one of the judges of election. A majority of these judges at all the polling places were, as usual, Liberals, and it was a Liberal who had committed the fraud.\* His act had caused the defeat of one of the People's candidates in the Fourth precinct, namely, Lieutenant Richard W. Young, whose office had been given to Mr. Parley L. Williams, his opponent.

The person immediately responsible for this piece of rascality was William J. Allen, late of Colorado, one of the army of transients that had drifted westward during the past few months. Proofs of his guilt having been obtained, Allen was arrested, and early in August a preliminary examination was begun before U. S. Commissioner Greenman. At the request of H. S. McCallum, a continuance was granted, but a few weeks later the examination was resumed. It was clearly shown that a fraud had been committed, and that William J. Allen was responsible for it; but the commissioner discharged the defendant, remarking that while it was evident the elec-

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\* The school law made the city council the judges of these elections; but the Utah Commission had asserted their right to appoint them, and had made the judges identical with those selected by them to conduct the county elections in August.

tion had been carelessly conducted, the evidence was not strong enough to warrant him in holding the accused to answer to the grand jury.

Judge Zane, however, thought differently. The case came before him on the 13th of September, eleven days after the close of the examination before Commissioner Greenman. The proceedings before the Chief Justice were in a suit planted on the 25th of August by Lieutenant Young, the defrauded trustee, for the recovery of the office held by his opponent. The plaintiff offered in evidence the tally list containing the names of those who voted at Poll No. 2, where Allen presided on the day of the election. It was thus shown that over one hundred and forty People's party men had voted at Poll No. 2, while but one hundred and twenty-eight votes for Mr. Young were found in the ballot box. A stipulation was also admitted in which it was claimed and conceded that over one hundred and forty witnesses would, if called upon, testify that they had voted for Mr. Young. Strong objection was made by the defense to the admission of these documents, but Judge Zane overruled the objections.

Various witnesses then testified, among them George E. Blair, a checker for the People's party at Poll No. 2. He stated that he was present on the day in question when Henry Puzey, one of their voters, came up and handed his ballot to Mr. Allen. He was challenged and Allen put his ballot down by the box. The challenge was withdrawn, and Allen then picked up another ballot—not the one handed in by Mr. Puzey—and dropped it in the box. Witness saw Allen do the same thing in two other instances. Other witnesses gave similar testimony against Allen, who was shown to have received all the ballots and to have done all the depositing.

Witnesses for the defense—all Liberals—testified that they were at Poll No. 2 on the day of the election, and saw nothing wrong in Allen's conduct.

William J. Allen testified, denying all the allegations made against him, and stating that Mr. M. S. Woolley, his fellow judge, (a People's party man), had congratulated him on the fairness with which

he had conducted the election. He stated that he came to Utah from Colorado in December, 1889. He had traveled as a foot-racer under the assumed name of Dick Murphy; had been a policeman at Denver; had been arrested in that city for fraud connected with an election, but had been discharged. He was now a bar-keeper at the Crystal saloon. The day before the school election, Mr. H. S. McCallum, whom he had known for about twelve years, came to him and asked him to act as one of the judges in place of U. S. Commissioner Greenman, who would not be able to attend. Witness consented and Fred Kesler, one of the registrars, gave him his appointment.

Two registration oaths signed by William J. Allen were presented in evidence; one of them taken before Registrar Fred Kesler, in the Fourth precinct, May 29, 1890, and the other before Registrar W. L. Dykes, in the Second precinct, June 4th, 1890. Allen said he had voted in the Fourth precinct at the last election.

Commissioner Greenman testified that the reason he did not act as a judge of election was because Mr. McCallum and other members of the Liberal county committee had come to him and represented that there might be trouble on that day and advised him to remain in his office and be ready for business.

Registrar Kesler, placed upon the stand, stated that he had appointed Allen a judge of election on the recommendation of H. S. McCallum, who said that "he would make a good one." Witness did not know why McCallum—who had told him ten days before the election that it was likely Greenman would not act—had failed to notify the Utah Commission.

MR. RAWLINS (plaintiff's attorney).—"Are you not aware that it was a scheme to get Greenman out and Allen in, that the election might be manipulated?"

MR. KESLER.—"No, sir."

RAWLINS.—"Did you not have a suspicion that crooked work was intended?"

KESLER.—"No, sir."

RAWLINS.—"Then why did you appoint as election judge a bar-

keeper and a comparative stranger in the city, rather than some well-known and reputable person?"

KESLER.—“I can give no reason.”

Arguments of counsel followed and the case was submitted. Judge Zane rendered his decision on the 17th of September. It was a clear and lucid statement of the case, and an utter condemnation of the fraud and its perpetrators. In concluding, the Judge said:

“In a government which rests on the will of the people, the people should see that this will is expressed—that it shall not rest upon deception and fraud, nor upon the action of a rascal and a wretch who attempts to overthrow the expression of the people’s will, and thereby commits a crime akin to treason under a government which protects him.

“The judgment of this court is that Mr. Young was elected to this office and that Mr. Williams was not.”

Judge Zane then called the attention of the grand jury to the conduct of Mr. Allen and Mr. McCallum, and urged a thorough investigation of the charges made against them. Allen was indicted and tried, but the jury, composed of Liberals, acquitted him. McCallum was never called to account. Lieutenant Young secured his office as school trustee and became a member of the Salt Lake City Board of Education.

The August election, following close upon the heels of the school election, saw three tickets in the field for the Salt Lake County offices. They were the People’s, the Independent Workingmen’s, and the Liberal tickets. The first two were practically one, having been combined for the purpose of defeating the third. Upon one candidate only did the People and the Workingmen divide. Their coalition occurred as follows:

One of the pledges made by the Liberal party before the February election was that Salt Lake work should go to Salt Lake workmen; that “imported laborers should never be permitted to take the bread from the mouths of the children of our own workingmen.” That these sentiments—pathetic enough to bring “free water” to the eyes of all—were mere “springs to catch woodcocks,” was soon shown to the satisfaction and dissatisfaction of the workingmen of Salt Lake



City, especially the non-Mormons, who, having helped the Liberal party into power, naturally expected some recognition from it, or at all events that it would keep its promises to the public. They were doomed to disappointment. Not only were their demands for representation upon the Liberal ticket ignored, but the labor promised them, and which they sorely needed in order to win bread for their families, was given to imported "hobos," men without families, kept upon the public works and fed from the public crib at the expense of the overburdened tax-payers, that the party in power might retain what it had seized, and continue to roll up "handsome majorities" on election days. Salt Lake work did *not* go to Salt Lake workmen. The promise that it would, proved to be so much political pie-crust, "made only to be broken."

Indignant at this treatment, the workingmen resolved upon a movement to secure their rights. It was determined to rally the sons of toil, regardless of creed or party, put an independent ticket in the field, and contest for the Salt Lake County offices. Before taking this step, however, the non-Mormon workingmen decided to wait and see what might yet be done by their former friends, the Liberals.

The latter held their county convention at the Salt Lake Theater on the 21st of July. The ticket nominated was as follows:

Clerk—C. E. Allen.

Recorder—Henry Page.\*

Selectman—John P. Cahoon.

Assessor—W. J. Lynch.

Attorney—Walter Murphy.

Sheriff—Henry Barnes.

Coroner—Thomas E. Harris.

Surveyor—C. P. Brooks.

Treasurer—Joseph E. Galligher.

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\* The main contest in the convention was over the nomination for county recorder. Judge Powers, whose word was almost law with the Liberals, so great was his popularity, wanted the nomination for H. S. McCallum, his ablest lieutenant, whose claims were also urged by Judge Colborn, Jake Greenwald, Colonel Ferguson, W. G. Van Horne and

The workingmen, one of the foremost of whom was James Devine, having been again ignored, met en masse at the Federal court room on the evening of July 25th. They formed an organization, adopted a platform, passed resolutions, and nominated a ticket for the county election. The platform affirmed, as the primary object of the organization, protection for the workingmen. They declared: "Salt Lake work *shall* go to Salt Lake workmen," and "home contractors are entitled to preference in all public work over foreign contractors, conditions being equal."\*

The Independent Workingmen's ticket was as follows:

Clerk—Fergus Ferguson.

Recorder—John H. Rumel, Jr.

Assessor—J. H. Clive.

Sheriff—A. J. Burt.

Selectman—Geo. R. Cushing.

Surveyor—Lafayette G. Burton.

Attorney—J. H. Hurd.

Treasurer—J. B. Toronto.

Coroner—Lorenzo Cracroft.

The Liberals laughed scornfully at the split in their ranks represented by the labor movement. They did not see the danger ahead. They had "hobos" enough to more than counterbalance the defection, and could yet beat the People's party at the polls.

The latter held their convention at the Social Hall on July 26th, Mr. S. A. Kenner presiding. When the time came for nominating

others. One speaker said that McCallum was the real leader of the Liberal forces, and that to him was due their victory at the school election. The convention, however, would not have him. Frank Kimball, a native of Utah, a young man of ability and unblemished reputation, would probably have secured the nomination had not Judge Powers suddenly withdrawn McCallum's name and requested his supporters to vote for Colonel Page.

\* One of their resolutions ran thus:

"A public servant, in accepting his trust and accepting his pay, is in honor bound to serve the public. When he uses his official position to serve his private ends, he forfeits the confidence of his fellow citizens; hence we deprecate as disgraceful the universal candidature of the Salt Lake registration officers."

the ticket, Mr. James H. Moyle, one of the delegates, arose and, after referring to the action taken by the Workingmen the evening before, said: "With the understanding that the name of J. L. Rawlins be substituted on that ticket for that of J. H. Hurd, as candidate for county attorney, I move the adoption of the following resolution:"

*Resolved*, that we appreciate the efforts of the workingmen of Salt Lake County to secure a proper representation in the offices to be filled at the approaching election, and that we will unite with them in voting for the following candidates.

Mr. Moyle then read the names of the Workingmen's candidates, excepting only Mr. Hurd, for whom Mr. Rawlins was substituted.\* The resolution was adopted by a large majority, and the People's ticket was framed.

The Liberals now began to tremble, and the *Tribune* fiercely assailed the fusion movement. It was charged that its ticket had been framed in the office of the First Presidency of the Mormon Church, and its non-Mormon supporters were derisively styled "Elders" and "Saints." Devine and his friends were not to be put down by such means, however, and their cause grew and flourished in spite of all.

Mr. Rawlins—doubtless out of courtesy to his brother attorney and late fellow partisan, Mr. Hurd—declined the candidacy for county attorney offered by the People's convention, but expressed his grateful appreciation of the recognition given him. It was then offered to Mr. S. A. Kenner—also an attorney, but a member of the People's party—and by him accepted. Mr. Hurd's name remained upon the Workingmen's ticket for the same office. This division insured the election of the Liberal nominee, Mr. Murphy.

The campaign preceding the election was a lively one. A racy feature of it was a series of letters to the Salt Lake *Herald*, written by Sam Gilson, a sometime Liberal, but now a staunch supporter of

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\* This opposition was probably due to the fact that Mr. Hurd had taken a prominent part in preventing the naturalization of Mormon aliens in November, 1889.

the Workingmen, who in humorous but scathing style assailed the Liberal party and its late record.

The election came off on the 4th of August. The returns from all the counties were received by the Utah Commission and canvassed by the following board created by them: Secretary Sells, Judge Judd, Hugh Anderson, William W. Riter and Elias A. Smith. The two last-named were members of the People's party; the others, Liberals.

The Salt Lake County returns showed that for selectman, assessor, attorney, coroner and surveyor, the Liberal candidates had majorities ranging from fifty-eight to one hundred and seventeen. Mr. Allen, the candidate for clerk, received fifteen more votes than Mr. Ferguson. The vote between Toronto and Galligher, for treasurer, was a tie. For recorder, Mr. Rumel had a majority of seventy-three, and for sheriff, Mr. Burt a majority of two hundred. Both had run ahead of their ticket, "snowing under" their Liberal opponents.

It was claimed for Mr. Ferguson that his opponent's majority was due to frauds whereby, at the Bingham precinct thirteen illegal votes had been received for Allen, while at South Cottonwood sixteen voters who would have cast their ballots for Ferguson had had their names wrongfully stricken from the registration lists. Mr. Ferguson's attorney asked that these sixteen votes be accepted, and that the returns from Bingham be thrown out.

In the case of Mr. Toronto, between whom and Mr. Galligher a tie vote was reported, a discrepancy in the returns indicated that Toronto ought to have been credited with several more votes than those counted for him. His attorney asked that the ballot box be referred to in order to decide the question.

In the case of Mr. Rumel it appeared that his majority over Colonel Page could only be maintained by counting for one and the same person certain votes certified in the lists as having been cast for John H. Rumel, Jr., and other votes accredited to John H. Rumel; the difference being due to a clerical error on the part of one or more



*J. D. Peters*



of the judges of election. The Liberals claimed that John H. Rumel, Jr. and John H. Rumel were distinct persons, the division upon whom gave the election to their candidate. Mr. Rumel's attorneys argued that the omission of the affix "Jr." from his name did not create a fatal discrepancy, since he was the only John H. Rumel who was a candidate for office, and it was the design of the returns to indicate him and no other. They also showed that the lists abbreviated the name of Henry Page to H. Page in several instances, and yet there was no doubt that Henry Page was intended. They were willing, however, to go to the ballot boxes for a solution of the matter. This proposition the Liberals opposed, holding that the functions of the board of canvassers were but ministerial and they could not go behind the record of the judges.

Over the returns from Box Elder and Weber Counties there were also controversies. In the former case, two sets of judges had officiated at the Brigham City precinct, and the returns did not agree. The registrar of Box Elder County—Rev. S. L. Gillespie—had appointed as judges of election J. M. Coombs, W. N. Booth, Jr., and J. D. Peters: all three candidates for office. As it was contrary to the rule established by the Utah Commission for candidates to act as judges of election, that body interposed and appointed to supersede those gentlemen Brigham Wright, A. H. Snow and Lucius A. Snow. The judges appointed by Mr. Gillespie, being the first to reach the polls on election day, had refused to give way for the new appointees, who thereupon opened another poll in the same building, and the voters, in order to be secure, cast their ballots at both places. Both sets of judges sent certified returns to Salt Lake City, but these, as stated, did not agree. This was owing to the rejection of certain People's party votes at one poll and their acceptance at the other. The Liberals, who were defeated at Brigham City, wanted the entire vote of that precinct thrown out, as this would give them the county, which must otherwise go to the People.

Then came the Weber County returns, the correctness of which was denied by Daniel Hamer, the People's candidate for recorder,

who alleged that certain votes cast for him had been counted for his Liberal opponent, John G. Tyler; by means of which the latter was represented as entitled to the certificate of election. A recount of the ballots was requested.

On the 23rd of August the board of canvassers, by Secretary Sells, rendered a decision, the gist of which was as follows:

J. H. Rumel, Jr., is not J. H. Rumel, and H. Page and Henry Page is the same person.

Where there are discrepancies upon the face of the returns, it is the duty of the canvassing board to examine the ballot box.

In the case of Galligher and Toronto the discrepancy justifies an examination of the ballot box.

In the cases from Weber County, from Bingham precinct and South Cottonwood, the returns will govern.

In the Box Elder case the returns from the judges last appointed, by the Utah Commissioners, are held to be the legal returns.

The Liberal attorneys, in the Salt Lake County cases, sued out a writ of mandate to compel the board of canvassers to count the returns in the Rumel-Page case instead of going to the ballot box. An alternative writ was granted by Judge Zane and the hearing took place on the 28th and 29th of August. Judge Zane decided that the board of canvassers need not go to the ballot box to find out whether the disputed votes were cast for J. H. Rumel or J. H. Rumel, Jr.; the preponderance of evidence and the weight of legal presumption being that only J. H. Rumel, Jr. was a candidate for election, and that all the Rumel votes were meant for one and the same person. Mr. Rumel accordingly received the certificate of election and entered upon the duties of his office as recorder of Salt Lake County.

In the Toronto-Galligher case the board of canvassers found, on examining the ballot box, that Mr. Toronto had received two or three votes that had not been counted for him in the returns, and that he was the duly elected county treasurer. A contest was threatened by Mr. Galligher, but nothing came of it, and his opponent took the office to which he was entitled.

There was an extended contest over the county clerkship, the



duties of which had been assumed by Mr. Allen. Mr. Ferguson filed a protest against the issuance of the certificate of election to his opponent, and the case went into the District Court. It was clearly shown that frauds had been committed, and a certain number of votes were thrown out in consequence; but these were not sufficient to change the declared result of the election, Mr. Allen still having a bare majority. Mr. Ferguson's attorneys wanted the returns from the Bingham precinct—honey-combed as they were with fraud—rejected *in toto*; in which event their client would have had a decided majority. Judge Anderson, who heard the case, refused such a ruling, however, and his action was sustained by the Supreme Court of the Territory.

## CHAPTER XXVII.

1890.

OTHER EVENTS OF AN EVENTFUL YEAR—SETTLEMENT OF THE LONG PENDING CONTROVERSY BETWEEN THE GOVERNOR AND THE LEGISLATURE—A VICTORY FOR THE EXECUTIVE—THE IDAHO TEST-OATH LAW DECLARED CONSTITUTIONAL—A SIMILAR MEASURE PROPOSED FOR UTAH—THE CULLOM AND STRUBLE BILLS—CONSERVATIVE GENTILES OPPOSE THE MOVEMENT TO DISFRANCHISE THE MORMON PEOPLE—THE SUPREME COURT OF THE UNITED STATES SANCTIONS THE CONFISCATION OF MORMON CHURCH PROPERTY—SECRETARY BLAINE OPPOSES THE DISFRANCHISEMENT PROPOSITION—“SOMETHING TO BE DONE BY THE MORMONS”—THE MANIFESTO—PLURAL MARRIAGE SUSPENDED—END OF THE CRUSADE.

**E**IGHTEEN Hundred and Ninety was a very eventful year in the history of Utah. Doubtless it would be deemed such by the reader if nothing further remained to be chronicled concerning it. But it brought with it much more than “the boom” and the capture of Salt Lake City by the Liberals. One of its events alone—an event yet to be narrated—was sufficient to mark a new era for the Territory. It was the year of the issuance by the Mormon President, and the acceptance by the Mormon people, of the famous “Manifesto,” suspending the practice of the principle of plural marriage.

This event will be fully treated in its order. Other incidents having precedence as to time must first be mentioned.

The opening of the year witnessed the settlement of the long pending controversy between the Governor and the Legislature, relative to the right of the Executive to appoint, under section seven of the Organic Act, certain Territorial officers.\* By virtue of the sec-

\* The section referred to contained this clause :

“The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for.”



*W. W. Clayton*



tion named, the Governor held it to be his prerogative to appoint, or at least to nominate, among other officers, the Auditor and the Treasurer. The Legislature, basing its opposition on local laws of later date than the Organic Act—laws that had received the implied sanction of Congress—denied the rightfulness of the Governor's claim.

Of the efforts made by Governor Murray to unseat Auditor N. W. Clayton and Treasurer James Jack, and replace them with appointees of his own, the reader has been informed; also of the decision of the Supreme Court of Utah in favor of the Governor's appointees, Messrs. Arthur Pratt and Bolivar Roberts. From that decision Messrs. Clayton and Jack appealed to the court of last resort, which, on the 6th of January, 1890, decided the case against the appellants. It was held that the Governor had the right to nominate the officers in question; that the act of the Legislature of 1878, under which, in 1879, Messrs. Clayton and Jack had been elected by the people, was void; and that, pending action by the Legislative Council on the Governor's nominees, the latter were entitled to the offices.

Thus was the knotty problem solved. Messrs. Pratt and Roberts became, respectively, Auditor and Treasurer of the Territory, and recovered the salaries for work done by the incumbents since the beginning of the contest.\*

Another important case then pending in the Supreme Court at Washington was one involving the validity of the Idaho test-oath law. This measure, enacted in 1884-5 by the Legislature of that Territory, had successfully run the gauntlet of the local tribunals, and had been pronounced constitutional by Democratic as well as Republican judges. The Mormons in Idaho had all been disfranchised, and were standing aloof, "out of politics," not taking side with any party. The case in which the final test was made of the constitutionality of the law was that of the People *vs.* Samuel D.

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\* A special appropriation by the Legislature reimbursed Messrs. Clayton and Jack for their services as *de facto* Auditor and Treasurer. The expense of the litigation was borne by themselves. All their official acts were confirmed by the Assembly.

Davis, who, in September, 1889, had been prosecuted in the Third District Court of Idaho for procuring himself to be registered as an elector, contrary to the following provisions of the Revised Statutes of that Territory:

Section 509.—No person \* \* \* who is a bigamist, or polygamist, or who teaches, advises, counsels, or encourages any person or persons to become bigamists or polygamists, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization or association which teaches, advises, counsels or encourages its members or devotees or any other persons to commit the crime of bigamy, polygamy, or any other crime defined by law, either as a rite or ceremony of such order, organization, or association, or otherwise, is permitted to vote at any election, or to hold any position, or office of honor, trust or profit within this Territory.

Section 504 required an elector to swear, among other things, that he was not

A member of any order, organization, or association which teaches, advises, counsels or encourages its members, devotees, or any other person to commit the crime of bigamy or polygamy, or any other crime defined by law, as a duty arising or resulting from membership in such order, organization or association, or which practices bigamy, polygamy, or plural or celestial marriage as a doctrinal rite of such organization.

The defendant, Mr. Davis, and others had taken this oath, and in April, 1889, had been indicted—not for polygamy, for they were monogamists in practice, but for conspiracy; it being charged that when they took the oath they were members of the Mormon Church, which they knew taught and practiced polygamy as a doctrinal rite. The defendants demurred to the indictment, the demurrer was overruled, and each entered a separate plea of not guilty.

The trial of Mr. Davis took place on the 12th of September. The jury found him guilty as charged, and he was sentenced to pay a fine of five hundred dollars, and in default of its payment to be confined in the Oncida County jail for a term of two hundred and fifty days.

The prisoner, having been remanded to the custody of the Sheriff—H. G. Beason—immediately petitioned the court which had tried him, for a writ of habeas corpus, alleging that he was illegally



*Gen Budge*





restrained of his liberty. The point sought to be made was that the law punishing by disfranchisement men whose only offense was membership in the Mormon Church was a law respecting an establishment of religion, and therefore void.

The court ordered the writ to issue and the case was heard the same day upon which sentence was pronounced. The hearing over, the court held that sufficient cause had not been shown for the discharge of the defendant, and ordered that he be remanded. From this judgment the latter appealed to the Supreme Court of the United States.

The case was argued before that tribunal on the 9th and 10th of December, 1889; Judge Jeremiah Wilson, of Washington, and Hon. Franklin S. Richards, of Salt Lake City, spoke for the appellant, while the other side was presented by Hon. H. W. Smith, the reputed author of the Idaho test-oath, which was now on trial. Counsel for the appellant claimed that a law making criminal mere membership in a Church was unconstitutional and void, invading as it did the domain of conscience and making a man an offender for his religious belief. The opposing argument was to the effect that the Mormon Church was an organization that taught and practiced crime, and that membership therein was more than mere belief, it was action, and action was a rightful subject of legislation. The Idaho law, Mr. Smith maintained, was no more an infringement of religious liberty than the Edmunds-Tucker Act, which had already been declared constitutional.\*

The court, through Mr. Justice Field, rendered its decision on

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\* Idaho, at this time, was seeking admission into the Union upon a constitution disfranchising all her Mormon citizens. During the debate upon the Statehood proposition before the Senate committee on Territories, January 14, 1890. Judge Wilson—who with Delegate Caine and Hon. William Budge opposed Statehood on such grounds—remarked that it ought to suffice the people of Idaho to punish the Mormons as fast as they were proven guilty instead of punishing them in advance by disfranchisement. Delegate Dubois of Idaho answered that the Mormon Church was a criminal conspiracy, and the only way to effectually reach it was to destroy its political power, as the State constitution proposed to do.

Monday, the 3rd of February. The Idaho statute was declared constitutional, and the judgment of the lower court in the Davis habeas corpus case was affirmed.

In Utah, as well as in Idaho, the decision created a profound sensation. The Mormons were astounded; the Anti-Mormons, as a matter of course, jubilant. The news reached Salt Lake City only a few days before the election transferring the municipal government to the Liberal party. The campaign was therefore at its height. Until that contest was over, the Anti-Mormon leaders had little time to think, still less to act, in the direction most natural for them to pursue after this settlement of the Mormon question in Idaho. The election a thing of the past, they set to work to effect a similar settlement of the same question in Utah. Their plan was to induce Congress to make a law disfranchising every Mormon in this Territory.

Such a bill was accordingly framed, and taken to Washington by Mr. R. N. Baskin. He was accompanied, or soon afterwards joined, by Governor Thomas and ex-Governor West, whose ostensible business at the capital was to press upon Congress Utah's claims for a Government building. Messrs. Thomas and West had been sent East by the Salt Lake Chamber of Commerce, of which the ex-Governor was president.

Mr. Baskin reached his destination early in April. A few days after his arrival a bill was introduced into the United States Senate, providing that no person living in plural or celestial marriage, or who taught, advised or encouraged any person to enter into polygamy, or who was a member of, or contributed to the support, aid or encouragement of any organization that taught or encouraged the practice, or who assisted, aided or abetted in the solemnization of polygamous marriages, should vote, serve as a juror, or hold any office in the Territory of Utah. A test-oath was incorporated requiring each elector to swear that he was not a bigamist or polygamist, that he never would become one at any time or place, and would never directly or indirectly advise, aid or abet any person to commit

bigamy or polygamy; and that he was not a member of any organization which taught, advised or encouraged the practice of polygamy.

This bill, which was even more stringent than the Idaho anti-polygamy law, was presented by Senator Cullom, and thus became known as "the Cullom bill."

Next day—April 11th—a bill of precisely similar import was presented in the House; Mr. Struble, of Iowa, becoming its sponsor. It was referred to the Committee on Territories, of which Mr. Struble was chairman, and was briefly discussed in that body on the 16th of April. The committee, by a strict party vote—the Democrats opposing the measure—agreed to an amendment making the provisions of the proposed law applicable to all the territories. This awoke opposition from other delegates, notably Mr. Smith, of Arizona, who joined Delegate Caine in his fight against the bill.\*

On the 23rd of April the Struble bill was again discussed in committee, and an able speech against it was delivered by Delegate Caine. In the course of his address he said: "It is a new departure in anti-Mormon legislation, and is palpably in conflict with the avowed views of those members of the Senate and House of Representatives who advocated the former anti-polygamy act." He quoted largely from Supreme Court decisions, the statements of Congressmen and the reports of the Utah Commission, showing by these authorities that Congress, in the Edmunds Act and the Edmunds-Tucker Law, had undertaken to suppress, not the Mormon religion, but merely the practice of polygamy. He cited Senator Edmunds as saying that "upon a universally recognized principle we would not undertake to interfere with anybody's faith, doctrine and worship." Mr. Caine then added: "Will any person presume to say to me that I am not

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\* During the discussion before the committee, Delegate Dubois stated that the President of the Mormon Church had declared at the April Conference that there would be no further revelation received, from which the gentleman from Idaho inferred and argued that polygamy was irrevocably fastened upon the Church. That President Woodruff had not said what was attributed to him was subsequently shown by the publication of the official report of the Mormon leader's remarks on the occasion in question.

interfered with when I am disfranchised because I am a member of a certain order, organization or association?" He referred to the efforts made by the monogamous Mormons to place themselves in harmony with the rest of the nation, and said that the bill under consideration, which proposed to disfranchise that class, ought to be styled "a bill to punish loyalty."

"An astonishing element in this matter," said he, "is that the measure is seeking enactment without the endorsement of any party in Utah or the other Territories. Who wants such legislation? Who asks for it? No one who has any direct interest in this question. A few days ago I inquired of the Governor of Utah, who is here, and he stated emphatically that he was taking no part and would not do so one way or another. Prominent men here from Utah are equally reticent."

Delegate Dubois interrupted the speaker with the statement that Governor Thomas, ex-Governor West, and members of the Utah Commission who were in Washington, all favored the bill and thought it should become a law. Governor Thomas, he said, had made such a statement before two or three members of the committee.

Mr. Caine replied that he could only repeat what Governor Thomas had said to him, which was to the effect that he proposed to stand neutral on the question.

Mr. Struble, during Mr. Caine's argument, asked him if the Mormon Church had not recently been declared, by judicial decision in Utah, a criminal organization—referring to Judge Anderson's ruling denying citizenship to Mormon aliens—and observed that it was not because of their religious belief that it was now proposed to disfranchise the Mormons, but because they were members of a criminal organization.

Mr. Caine explained the circumstances which led to the delivery of the decision in question, and declared that it was founded upon falsehood and rendered for political purposes.

At a subsequent meeting of the committee, held April 26th,

Judge Wilson delivered a powerful argument against the bill. "Stripped of its serpentine verbiage," said he, "it is simply a bill to disfranchise all the members of the Mormon Church."

Delegate Dubois admitted that such was the intention of the measure.

"Then," said Judge Wilson, "you should amend it by striking out all after the enacting clause and insert: 'That no member of the Mormon Church shall hereafter vote, hold office or serve as a juror.'"

Chairman Struble announced that ex-Senator Saunders, of the Utah Commission, was present, and he wished to give him a few minutes' time. The chairman also said: "I am requested by Governor Thomas to say, in reply to Delegate Caine's remarks at the previous meeting, that while he is not here for this purpose, but in behalf of a public building bill, he is in hearty sympathy with this measure, and earnestly desires its passage."

Commissioner Saunders then addressed the committee. On being asked if he favored the bill, he evaded the question and confessed his lack of familiarity with the measure.

MR. SPRINGER.—"Do you endorse a measure to disfranchise every member of the Mormon Church?"

MR. SAUNDERS.—"In my opinion this would not do so."

DELEGATE CAINE.—"Do you give your official endorsement to a measure to disfranchise me and every other member of the Mormon Church merely for our belief?"

MR. SAUNDERS.—"No."

He then went on to say: "I am opposed to polygamy and if this would abolish it, I do not know but I would favor it. I felt very hopeful at one time that further legislation would not be necessary to accomplish the work we have in view out there, because we were led to believe that many of the stronger Mormons were ready to split on their party. We afterwards learned that they all voted solid, and that not one of them voted with us."

DELEGATE CAINE.—"Is it, then, because they would not vote with you that you are anxious to have them all disfranchised?"

Commissioner Saunders was rescued from the predicament in which this question placed him, by Chairman Struble, who now announced an adjournment.

Two days later the committee, by a strict party vote—the Democratic minority opposing—agreed to favorably report the bill with some slight amendments.\*

On the 29th of April it was reported, referred to the House calendar and ordered to be printed.

Meantime the same measure, under the name of the Cullom bill, had been referred to the Senate Committee on Territories. On the 19th of May Delegate Caine and Mr. Frank J. Cannon appeared before that body to oppose the contemplated enactment. Mr. Cannon took the place of Judge Wilson, who was prevented by illness from being present. A brilliant speaker, well informed on local and national affairs, Mr. Cannon made a stirring appeal in behalf of "Young Utah." † Said he:

"The young men of the Mormon faith have accepted the conditions imposed by the Government. They are giving every reasonable pledge that they will not disobey the special laws of Congress relating to polygamy; and will not aid or abet others in disobeying such laws. It is a poor reward that this bill proposes to bestow—to inflict the same political deprivations on the men who are obeying the law as have been imposed upon offenders. Such a measure will destroy the whole idea of justice. You punished our fathers for an act, and now you would punish us for a thought. You would take from us the franchise simply because a certain revelation exists in the

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\* The following amendment, offered by Mr. Springer, was rejected

" Provided that no person shall be deprived of the right to vote, hold office, or sit on a jury, on account of his religious belief or opinions."

To have adopted this proviso would have been equivalent to striking out the enacting clause, since the sole purpose of the measure was to deprive the Mormons of the right to vote, hold office and sit on juries, and that, for their religious belief and opinions.

† Frank J. Cannon, son of Hon. George Q. Cannon, was at this time editor of the *Ogden Standard*. Six years later he represented the State of Utah in the Senate of the United States.

books of the Church—a revelation for which we are not responsible, and over which we have no control.”

SENATOR PAYNE.—“Who can eliminate that revelation?”

MR. CANNON.—“The same authority which brought it into being.”

Asked if the revelation was mandatory, he replied that a great many men in the Church had held from the beginning that it was permissive, not obligatory, and that Bishops and even Apostles had been chosen who had not entered the relation of plural marriage.

SENATOR CULLOM.—“You believe in the revelation?”

MR. CANNON.—“I do; and I also believe in the divine command to ‘render unto Caesar the things which are Caesar’s.’ I believe in the tenet of our faith which requires us to submit to the laws of the country in which we live. Therefore, in obeying the law of Congress which forbids the practice of plural marriage, I believe I am not violating the creed of the Church.”

Mr. Cannon went on to show what he considered the real motives of those who favored the bill. It was not to suppress polygamy, but to gain political ascendancy for their party. He referred to the Liberal victories in Ogden and Salt Lake City, where the Gentiles had gained control by majorities at the polls, and stated that they hoped to carry Salt Lake County in August by means of their numerical preponderance. But in many of the counties they could not do this. Hence, the scheme for Mormon disfranchisement concocted by the instigators of this proposed legislation. He cited the case of Logan City, which had a population of several thousand souls, only about fifty of whom were adult Liberals. It was proposed to strip the majority of the franchise and hand them over bound hand and foot to be tyrannized over by fifty petty rulers. In closing, the speaker appealed strongly to the committee not to intervene with any disheartening legislation between the Territory and her glorious business prospects and certain social regeneration.

Mr. Baskin and ex-Governor West were present during the discussion. They were told by the chairman that if they wished to

submit any views in writing they could do so. Delegate Caine furnished to members of the committee copies of his argument against the Struble bill. The friends of the Cullom bill succeeded in having it favorably reported to the Senate.

Meantime a strong opposition to the proposed disfranchisement of the Mormon people was arising in influential quarters. The conservative Gentiles of Utah came out in pronounced antagonism to the Cullom and Struble bills, the enactment of which, it was foreseen, would not only perpetuate past feuds and widen the chasm between the two classes of the commonwealth, but deal a death-blow to the material interests of the Territory. As Utah, and especially Salt Lake City, was just then in the full enjoyment of "the boom," and everything seemed prosperous and promising, such a consideration had weight, particularly with those who had invested heavily in real estate and in various business enterprises in these parts.

The Mormon press opened its batteries upon Messrs. Baskin, Thomas and West, especially the two latter, who were accused of misdirecting their energies from the business upon which the Chamber of Commerce had sent them to Washington, and employing their time in the furtherance of a partisan scheme. The *Tribune* was kept busy defending their reported sayings and doings at the national capital. The Chamber of Commerce winced under the censure heaped upon its representatives and indirectly upon itself, and still maintained that it was an independent, non-political organization, working in the interest of all classes.

One evening—it was the 5th of May—there was a meeting of the Chamber to which the public was invited, to discuss the improvement of the city, the establishment of home industries and other timely topics. In the absence of President West, Vice-President Fred Simon filled the chair. Colonel H. C. Lett, president of the Real Estate Exchange, having spoken, the chairman introduced Elias Morris, "the veteran manufacturer." Mr. Morris in the course of his address criticized the action of certain men who, combining with the railroads, had crushed out such enterprises as the chemical



and glass works, and announced himself as in favor of founding home industries. He was not for "inviting all creation here, until we were prepared to give them work." He made mention of the approaching autumnal exposition, and then touched upon the political situation; a subject tabooed by the rules of the Chamber. "Salt Lake City," said he, "is not Utah; it is only a portion of the Territory. We must have the co-operation of those living throughout the length and breadth of the Territory if we expect to make a success of the Fair. I wish to say this as an old resident of Salt Lake. The best part of my life has been spent here. And I tell you one thing, if you are her friends, there is one thing the Chamber of Commerce can do. Let your voice be raised against disfranchising"—

President Simon here interrupted the speaker. "No politics or religion on this floor," said he, rapping with his gavel upon the desk. "The gentleman is out of order."

"Not so," exclaimed Morris, "I am speaking for the good of the city and the Territory."

"It makes no difference. This is not the place to discuss political questions. The Chamber of Commerce has no voice in the matter."

MR. MORRIS.—"Has not this Chamber of Commerce been heard in Congress in favor of this bill, through the representatives of this Chamber, who are there favoring the most damnable measure that was ever concocted; the purpose of which is to disfranchise thousands of innocent men who have never violated any law?"

The chairman parried the question as best he could, and exclaimed:

"The gentleman shall confine his remarks to manufactories, or take his seat."

Applause followed the decision, and Mr. Morris took his seat, well satisfied that whatever might be thought of the propriety of mentioning the subject at such a time and place, he had dealt the cause of disfranchisement a vigorous blow.

Whether or not this was the beginning of the movement against

disfranchisement, it is certain that about this time a petition was circulated among the merchants and business men of Salt Lake City, praying Congress not to pass the Cullom and Struble bills. Some of the Gentiles signed this petition, others refused to do so, and the schism in their ranks that for some time had been growing, now visibly widened. The Mormons saw through this rift in the cloud a ray of light from the great sun beyond.

About the middle of May Governor Thomas returned from Washington. In an interview published in the Salt Lake *Tribune* he was reported as saying that in his opinion the Cullom or the Struble bill would become law. A majority of the Committee on Territories in both House and Senate favored it, and he believed a majority in each branch of Congress would vote for it. The decision of the Supreme Court of the United States declaring the Idaho anti-polygamy law constitutional had been accepted by the leading members of Congress as the solution of the Mormon problem. Senators Cullom, Stewart, Platt, Paddock, Manderson, Jones, Sanders and others, as well as Representatives McKinley, Struble, Baker, Dorsey and Reed were in favor of a similar law for Utah. The Governor had stated to Mr. Struble that he believed the great majority of the Gentiles in this Territory would welcome the passage of such a bill as Mr. Baskin's [the Cullom-Struble bill] and he himself was in favor of any legislation that would destroy the political power of the Mormon Church.

That the great majority of the Gentiles of Utah were in favor of the disfranchisement of the Mormons, may or may not have been true; but that a very influential part of them opposed disfranchisement, and now took steps to make that opposition felt, is certain. Hundreds of them, including merchants, business men, and many of the "boys in blue" at Fort Douglas, appended their names to the petition praying Congress not to pass the Cullom and Struble bills. One of those who signed the petition and resisted all importunities from his Anti-Mormon friends to induce him to erase his signature from the document, was Fred Simon, Vice-President of the Salt Lake

Chamber of Commerce.\* The following letter—now published for the first time—defines his attitude and that of the conservative non-Mormons of the period:

SALT LAKE CITY, UTAH,

May 23, 1890.

*Hon. Caleb W. West, Riggs House, Washington, D. C.*

MY DEAR GOVERNOR:—It is some time since I last wrote you, and realizing that you have already been informed about the dissension in our ranks, in regard to the Cullom bill, I deem it advisable to address this letter to you, in order that you may fully understand my position.

I herewith enclose a copy of a letter addressed to Governor Thomas today, which I will supplement with such thoughts as may be pertinent.

Before you assumed the reins of government, a policy had been pursued here which tried to settle our difficulties by most radical measures, if by such means headway could be made. Fortunately for the good and best interests of Utah, the administration changed. I watched the beginning of your work with closest attention, and when I realized that you were working in the right direction, I came to you and tendered you my services, telling you to put me to work wherever I could do you or our cause some good; and who can say that we have not worked hand in hand from that very day?

Have you ever assigned a duty to me which I did not cheerfully perform? Did I ever allow personal motives to interfere with any work that was given me to do? I looked upon you as the chief, gladly carried out your commands, and who can say that our work has not borne good fruit?

It was our conservative policy, of which you were the leader, which made it possible for the Liberal party to win; but for this work, the radical Liberal element would be as little advanced as it was five years ago. And now our wheels of progress are to be turned backward, and a policy inaugurated which in ten minutes' time shall settle what ought to take from five to ten years to accomplish. Take a stave and try to bend it into a hoop by a sudden motion and you will break it; only by gradual bending can the work be accomplished.

We have by our policy won over a certain liberal Mormon element, which has worked hand in hand with us on all occasions; they may not have voted the Liberal ticket, but each one of them has aided in bringing in from five to ten Liberal votes, which made it possible for us to win. That small body of Mormons in the Chamber of Commerce has been the balance wheel which has kept our machinery in proper motion. But for these, the Chamber of Commerce would long ago have resolved itself into a little political body of men, which when coming together would have thought of nothing else but discussing politics and damning the Mormons, as has been their wont to do when a few Gentiles would meet anywhere. It was by having the Mormon members with us, that

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\* "Fred" had been in bad odor with his Mormon friends for having called on President Harrison, soon after his election, and urged him to prosecute the Utah crusade. He averred at the time that his motive and position were not understood.

we could carry out our policy of "no politics and no religion in the Chamber of Commerce" and it is through this that all the good in the past five years has been accomplished.

About nine years ago a Board of Trade was established in this city, which thought it could get along without the Mormons; that Board of Trade died in about two years, and during its existence of two years was never known to accomplish anything which even leaves today the slightest ripple upon the waves of time.

The moment the Cullom bill passes, every Mormon must draw out of the Chamber of Commerce: every Mormon who has worked hand in hand with us in the past in the building up of our city and territory, must from that moment take an opposite direction.

The Cullom bill looks to me more like a "Ukase" conceived in the mind of the Czar of Russia than a bill framed under the Government that is supposed to be built upon the broadest platform existing upon the face of the earth.

If a bill were framed that men should forfeit their citizenship for having taken upon themselves obligations which are against the laws of our country, I would have little to say; but to punish a man and make him an outcast because he happens to belong to a religious sect which teaches certain things which he himself may not believe, is making a precedent so far-reaching that it can only terminate by gradually disfranchising the Catholic for believing too much and the Infidel for believing too little.

From the moment the Cullom bill is passed, we must make up our minds that we have in every Mormon a conspirator who will lie awake night after night, and think and plot and plan how to get even. It seems to me as though the bill has been conceived in hatred and vindictiveness, and will bear poisoned fruit, which will not only poison the make-up of the average man, but will also inoculate itself upon those who are now advocating this policy.

To attempt to build a commonwealth with two hundred thousand conspirators in our midst, vastly outnumbering the other side, is like erecting a building, the foundation of which rests upon a sand bank. Sparta had in its own midst Helots whom they conquered, and history well proves the result of their work.

In the shaping of the policy which shall control this Territory, we have so many precedents to be guided by that it seems to me that all mistakes can be avoided.

Our party claims to be Liberal; the policy which it is now endeavoring to pursue from the National standpoint, and also as a home policy, will make the name of the Liberal party a farce, if we have not enough sense to profit by the experience of those who controlled here for forty years past. It was through non-recognition that the fight was begun and kept up, as you well know; and now are we to continue a policy, by trying to get even? This is neither wisdom nor statesmanship. Whenever anyone will demonstrate to me that the committing of two wrongs makes one right, I shall learn a truth which so far has appeared to me a fallacy.

A great deal more can be said upon the issue before us, but you will take sufficient out of this to know where to find me when you return home. I find that I am not cut out for a politician, and whatever work you and I do in the future, on my part, can only be done through the policy here indicated.

The Chamber of Commerce continues to do a good deal of work, and would, undoubtedly, have done more had you been here to guide the ship. In your absence, I

do not intend to strand it, or let any part of the forces desert it. I mean to be able to turn the full command over to you as I received it, and after that let matters shape themselves as they will.

You will always find me true to the best interests of our city and territory, loyal to my friends, but also so independent in thought and action that when I conceive the right no man or party can bind me. This is the platform I have aimed to stand upon here in the past, and as I get older my convictions become firmer in that regard from year to year.

I would at any time rather think and feel that I am right than go to Congress or even be President.

I remain,

Very truly and sincerely yours,

FRED SIMON.\*

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\* The letter to Governor Thomas, referred to in the foregoing epistle, made special mention of the efforts of the Anti-Mormons to induce Mr. Simon to withdraw his signature from the petition against the disfranchisement bills, and to prevent that petition being sent to Washington. Said he in this communication :

"I have paid no attention to such criticisms as the *Tribune* has seen fit to bestow upon me, and shall not notice anything they may say in that regard in the future. As to not sending the petition to Washington, that would be an act which would ever make me feel ashamed of myself as long as I would reside in this Territory or anywhere else. The petition was signed by a goodly number of citizens in good faith, to be forwarded to Washington. The only control I can exercise over it is in regard to my own signature, and that signature was placed there to stay.

I fully realize the remark you made last evening, while again consulting with you and Mr. Lannan, that my political head is upon the block. Do you for one moment think that I did not weigh the pros and cons? Do you realize that a number of nights were passed sleeplessly ere this step was taken.—that when the heart conquered the head, that this conquest was made in good faith, and on that account all consequences must be borne? \* \* \* Once, nearly five years ago, I opposed the policy of Governor Murray, and put myself in accord with an element which tried to solve the issues here by peaceable and progressive means. Whenever an attempt is made to inaugurate a different policy, I must be counted out, knowing that I am not fit to work in any other direction than the one I have indicated.

I fill a number of important positions in the Liberal party,—as chairman of the Fifth Precinct, chairman of the Executive Committee of the Young Men's Liberal Club, and president of the Twelfth Ward, and feel as though I can do my duty by our party in our common fight. If at any time it is thought best I should resign from these positions, I am ready to tender my resignation for these, as well as all other positions which I now hold, through you or others of our party. \* \* \* As I stand now, with the issues before me, I cannot only face the Liberal party, but stand before the judgment seat of God and feel that I have done what my conscience and heart have dictated is best to do. When one feels that way, governors, editors and parties assume a small significance. \* \* \*

I am very truly and sincerely yours,

FRED SIMON.

prowess and was thenceforth solicitous only as to the best and safest method of letting the animal go.

Senator Edmunds came forward with a bill to render legal the illegal seizure. He proposed to empower the Secretary of the Interior to dispose of the personal property as he had already been empowered to dispose of the real estate, to-wit: for the benefit of the common schools of Utah. This bill, introduced in the Senate on the 10th of June and referred to the committee on the Judiciary, was favorably reported by Senator Edmunds, the chairman, two days later. He also reported favorably another bill, to reorganize the government of the Territory.\*

The bill to dispose of the escheated property was "railroaded" through the Senate on the 21st of June. In vain Senators Butler, Teller, Voorhees and others counseled delay, urging that with the litigation over the property still unsettled by the Supreme Court of the United States, it was premature to decide where the fruits of that litigation should go. It was in vain that an amendment was offered by Mr. Butler and sustained by Mr. Teller, proposing that the funds in question be turned over to the general board of education of the Mormon Church, to be used for educational purposes with the approval of the President of the United States, and with the understanding that it was not to be used in teaching or propagating polygamy. The Senator from Vermont refused to hearken. The bill would not affect the property until after the Supreme Court should dispose of everybody's rights, public and private, and he was opposed to any delay in passing it. The bill passed the Senate.

Such was the posture of affairs in the summer of 1890. What would be the outcome was the question agitating all Utah. The disposal of the Church property was not the uppermost subject in the

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\* The main features of this bill were provisions reapportioning the Legislative representation, vacating the offices of Territorial auditor, treasurer, commissioners to locate University lands, probate judges, county clerks, selectmen, assessors, recorders and superintendents of district schools, and giving the Governor the appointive power in relation to the same.



SCENE IN WILLAMETTE VALLEY  
ON OREGON SHORT LINE R.R.  
C. SAUSAGE





minds of the people. "Are the Mormons to be disfranchised? or will Congress content itself with reorganizing the Territorial government?"—these were the main queries. Efforts for and against the pending legislation continued to be made, and thus the summer months went by.

Among those who went to Washington to work for the defeat of the Cullom and Struble bills was Hon. George Q. Cannon, who during the period of his exile had made one or more visits to the capital in the interest of his people. He was accompanied this time by Bishop H. B. Clawson. Colonel Isaac Trumbo, of California, a relative of Bishop Clawson's, was also upon the scene, and rendered valuable service in behalf of his Utah friends. No less efficient were the efforts of Mr. Frank J. Cannon, whose name has already been mentioned in this connection. On separate occasions, he and Trumbo, after appealing in vain to Senator Edmunds and other stalwarts of the Republican party—with which these young men both sympathized—sought the presence of the Secretary of State, Hon. James G. Blaine, and so impressed him with the impolicy of the act contemplated by Congress that he used his potent influence against it. One of the arguments used by them, and that doubtless had great weight with the "Plumed Knight" and other leaders of the Republican party, was that Utah was not "hopelessly Democratic;" that many of her people were indoctrinated with Republican principles—notably protection—and that it was suicidal to antagonize the element that might yet make Utah a Republican State. Blaine, moreover, was a friend to Utah on general principles. It was due to him that the Cullom and Struble bills were not rushed through Congress in the summer of 1890. His powerful hand, however, was interposed with the understanding that something would be done by the Mormons to meet the exigencies of the situation.

The autumn of the year witnessed an event of supreme importance to Utah and the Mormon people. No event in the history of the Territory has caused more comment or been more prolific of results. It was the issuance by the President of the Church of

Jesus Christ of Latter-day Saints and the unanimous acceptance by the members of what is known as "The Manifesto," an official declaration in which the Mormon leader—Wilford Woodruff—made known his intention to submit to the laws of Congress enacted against the practice of plural marriage, and use his influence to induce his people to do the same. Polygamy being one of the main factors of the Mormon problem, and its surrender the most that the Federal Government demanded as a condition precedent to the termination of "the Crusade" and the granting of Utah's oft-repeated prayer for Statehood, the momentous nature of the event may readily be recognized.

The manifesto was issued on the 24th of September. Its full text, as given to the press, and published by the leading papers of the country, was as follows:

#### OFFICIAL DECLARATION.

*To Whom It May Concern:*

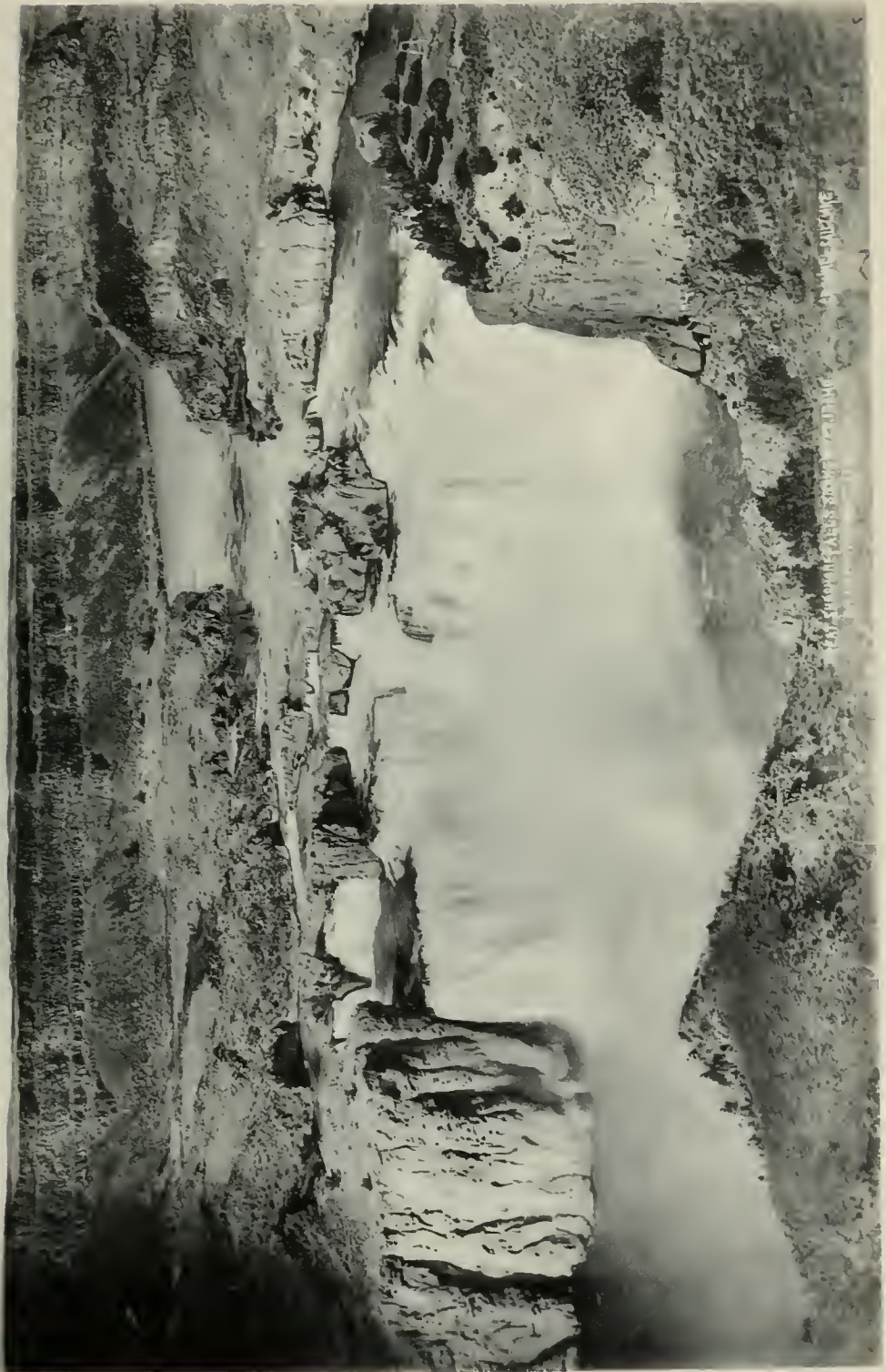
Press dispatches having been sent for political purposes from Salt Lake City, which have been widely published, to the effect that the Utah Commission, in their recent report to the Secretary of the Interior, allege that plural marriages are still being solemnized and that forty or more such marriages have been contracted in Utah since last June or during the past year; also that in public discourses the leaders of the Church have taught, encouraged and urged the continuance of the practice of polygamy;

I, therefore, as President of the Church of Jesus Christ of Latter-day Saints, do hereby, in the most solemn manner, declare that these charges are false. We are not teaching polygamy or plural marriage, nor permitting any person to enter into its practice, and I deny that either forty or any other number of plural marriages have during that period been solemnized in our temples or in any other place in the Territory.

One case has been reported, in which the parties alleged that the marriage was performed in the Endowment House, in Salt Lake City, in the spring of 1889, but I have not been able to learn who performed the ceremony; whatever was done in this matter was without my knowledge. In consequence of this alleged occurrence the Endowment House was, by my instructions, taken down without delay.

Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws, and to use my influence with the members of the Church over which I preside to have them do likewise.

There is nothing in my teachings to the Church or in those of my associates, during the time specified, which can be reasonably construed to inculcate or encourage polygamy, and when any Elder of the Church has used language which appeared to convey any such



GREAT SHOSHONE FALLS. SNAKE RIVER, IDAHO. ON O. S. L. R. R.



teaching he has been promptly reprov'd. And I now publicly declare that my advice to the Latter-day Saints is to refrain from contracting any marriage forbidden by the law of the land.

WILFORD WOODRUFF,

President of the Church of Jesus Christ of Latter-day Saints.

The issuance of this declaration was a most unwelcome surprise to the Anti-Mormons. It completely took the wind out of their sails. It was what they had been clamoring for for years, and yet of all things it was the very thing they did not want; particularly at this time, when the fruit for which they had so long waited was ripe and just about ready to fall.

It was no part of their purpose to accept the Mormon leader's manifesto as a solution and settlement of the Mormon question. "What shall be done to counteract it?" was their sole thought and care. They must do something, and at once, or else sheathe their weapons, furl their flag and give up the fight. Two plans of action presented themselves. One was to impeach the sincerity of the declaration; the other to continue to flood the country with charges similar to those referred to in the document and which had constituted one of the causes of its origin. Both plans were adopted.

October came, the General Conference of the Church of Jesus Christ of Latter-day Saints convened at Salt Lake City, and President Woodruff laid before the Latter-day Saints the manifesto issued about two weeks previously. It was the forenoon of Monday, October 6th, the closing day of the Conference. President Woodruff arose and stated that as the question was often asked, "What do the Latter-day Saints believe?" he and his associates felt disposed to have the Church's articles of faith read upon this occasion. He then requested Bishop O. F. Whitney to read the Articles of Faith. They were read accordingly.\*

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\* For the Articles of Faith of the Church of Jesus Christ of Latter-day Saints see pages 73 and 74, Volume I.

The parts most pertinent to this occasion were the following :

On motion of Apostle Franklin D. Richards, the Articles of Faith were sustained as the rule of faith and conduct for the Church.

At the request of the Presidency, Bishop Whitney then took the stand and read the manifesto, after which Apostle Lorenzo Snow presented the following motion :

I move that, recognizing Wilford Woodruff as the President of the Church of Jesus Christ of Latter-day Saints, and the only man on the earth at the present time who holds the keys of the sealing ordinances, we consider him fully authorized, by virtue of his position, to issue the manifesto which has been read in our hearing and which is dated September 24, 1890, and that as a Church in general conference assembled, we accept his declaration concerning plural marriages as authoritative and binding.

The vote to sustain the motion was unanimous.

President George Q. Cannon then addressed the congregation. He quoted the following paragraph of a revelation given to Joseph Smith, January 19, 1841 :

Verily, verily, I say unto you, that when I give a commandment to any of the sons of men, to do a work unto my name, and those sons of men go with all their might, and with all they have, to perform that work, and cease not their diligence, and their enemies come upon them and hinder them from performing that work; behold, it behoveth me to require that work no more at the hands of those sons of men, but to accept of their offerings.

It was upon this basis, the speaker said, that President Woodruff had felt justified in issuing the manifesto. President Cannon then reviewed the history of anti-polygamy legislation and showed that the sacrifices made by the Latter-day Saints for the sake of the

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“ 6. We believe in the same organization that existed in the primitive Church, viz: apostles, prophets, pastors, teachers, evangelists, etc.

\* \* \* \* \*

“ 9. We believe all that God has revealed, all that He does now reveal, and we believe that He will yet reveal many great and important things pertaining to the Kingdom of God.

\* \* \* \* \*

“ 11. We claim the privilege of worshiping Almighty God according to the dictates of our conscience, and allow all men the same privilege, let them worship how, where or what they may.

“ 12.—We believe in being subject to kings, presidents, rulers and magistrates, in obeying, honoring and sustaining the law.”



SALTAIR BEACH. GREAT SALT LAKE.





principle of plural marriage had not been in vain; though some, in view of the present issue, might think otherwise. Those sacrifices at least testified to the sincerity and conscientiousness of those who had made them. President Woodruff and his counselors had been appealed to many times by leading brethren in the Church to issue some such declaration as this—especially since polygamous marriages ceased, and in order that the Church might derive the benefit that would result from the announcement—but not until the 24th of September did the Lord move upon President Woodruff to do as he had done in this matter. He had been prompted by the Spirit of God, in whose providence the time had come when it seemed necessary that something should be done to meet the requirements of the country, and to save the people. It was the duty of all Latter-day Saints to submit to this expression of the mind and will of the Almighty.

President Woodruff supplemented the remarks of his first counselor with an address from which we take the following paragraphs:

I want to say to all Israel that the step which I have taken in issuing this manifesto has not been done without earnest prayer before the Lord. I am about to go into the spirit world, like other men of my age. I expect to meet the face of my Heavenly Father—the Father of my spirit; I expect to meet the face of Joseph Smith, of Brigham Young, of John Taylor, and of the Apostles, and for me to have taken a stand in anything which is not pleasing in the sight of God, or before the heavens, I would rather have gone out and been shot. My life is no better than other men's. I am not ignorant of the feelings that have been engendered through the course I have pursued. But I have done my duty, and the nation of which we form a part must be responsible for that which has been done in relation to this principle.

The Lord has required at our hands many things that we have not done, many things that we were prevented from doing. The Lord required us to build a Temple in Jackson County. We were prevented by violence from doing it. He required us to build a Temple in Far West, which we have not been able to do. A great many things have been required of us, and we have not been able to do them because of those that surrounded us in the world. \* \* \*

It is not wisdom for us to make war upon sixty-five millions of people. It is not wisdom for us to go forth and carry out this principle against the laws of the nation and receive the consequences. That is in the hands of God, and He will govern and control it. \* \* \*

*manifest*  
X

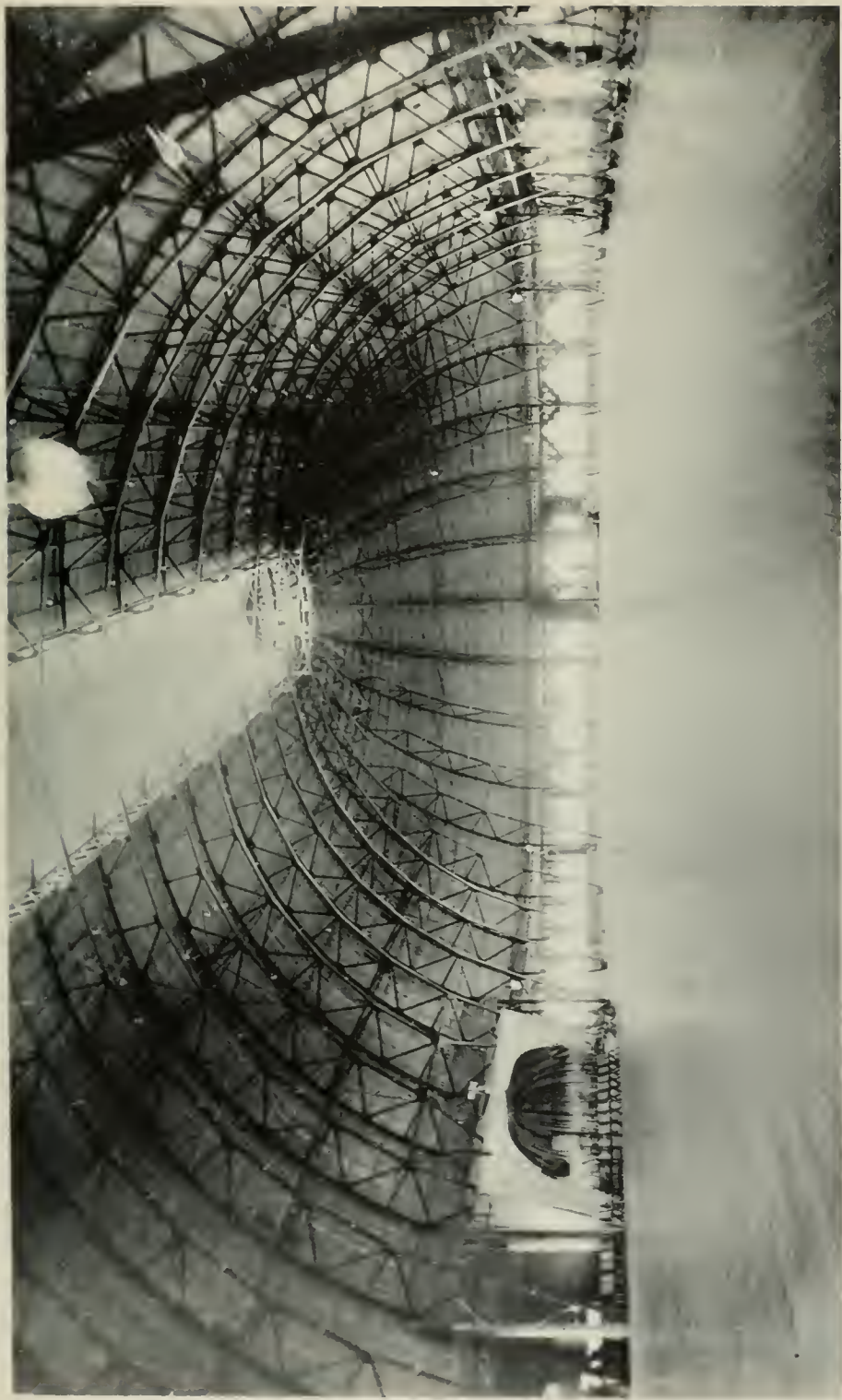
I want the prayers of the Latter-day Saints. I thank God that I have seen with my eyes this day that this people have been ready to vote to sustain me in an action that I know, in one sense, has pained their hearts. Brother George Q. Cannon has laid before you our position. The Lord has given us commandments concerning many things, and we have carried them out as far as we could; but when we cannot do it, we are justified. The Lord does not require at our hands things that we cannot do. \* \* \*

Our nation is in the hands of God. He holds their destiny. He holds the destinies of all men. I will say to the Latter-day Saints, as an Elder in Israel and as an Apostle of the Lord Jesus Christ, we are approaching some of the most tremendous judgments God ever poured out upon the world. You watch the signs of the times, the signs of the coming of the Son of Man. They are beginning to be made manifest both in heaven and on earth. \* \* \*

I pray God that He will bless these Apostles, Prophets and Patriarchs, these Seventies, High Priests and Elders of Israel, and these Latter-day Saints, who have entered into covenant with our God. You have a great future before you. \* \* \* I ask my Heavenly Father to pour out His Spirit upon me, as His servant, that in my advanced age, and during the few days I have to spend here in the flesh, I may be led by the inspiration of the Almighty. I say to Israel, the Lord will never permit me nor any other man who stands as the President of this Church, to lead you astray. It is not in the programme. It is not in the mind of God. If I were to attempt that, the Lord would remove me out of my place, and so He will any other man who attempts to lead the children of men astray from the oracles of God and from their duty. God bless you. Amen.

X Thus was issued and ratified the famous manifesto suspending the practice of the principle of plural marriage. The effect of this action upon those who favored the drastic Anti-Mormon legislation then pending in Congress, was most dispiriting. They protested that the "whole business" was a sham, a political trick, to deceive the nation and gain a temporary advantage; and many continued to voice that view long after the conservative Gentiles had accepted the declaration as sincere, and ceased their aggressive operations, based upon former conditions, which were now conceded to be passing away.

One of the first to recognize the sincerity of the Mormon leader's declaration, and allow it to govern his official conduct, was Chief Justice Zane. In common with others of his class, he had said to the Mormon people and their leaders, "Come within the law and all this trouble will cease." He had repeatedly expressed the wish that the head of the Church would put forth some such pronouncement



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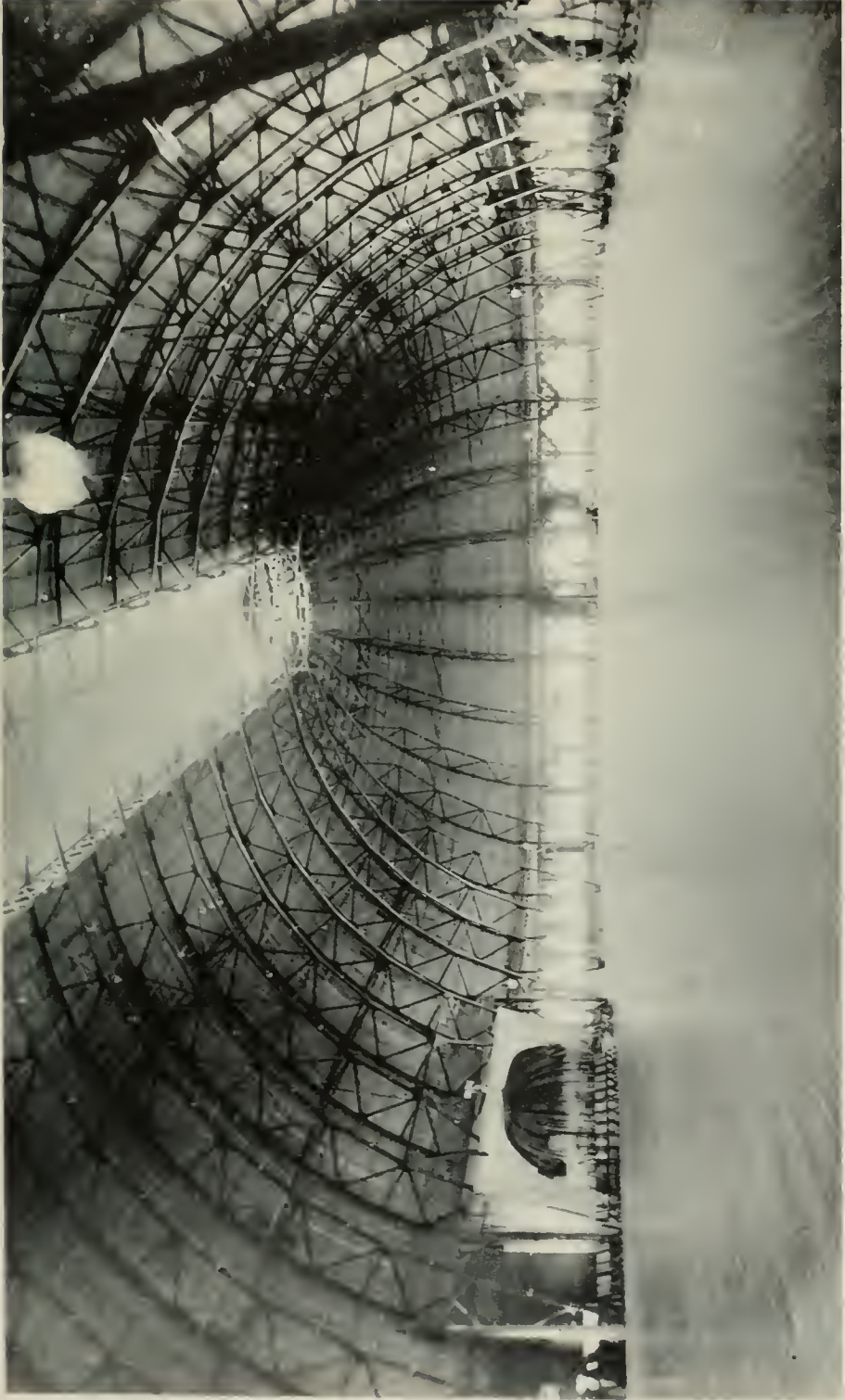
I want the prayers of the Latter-day Saints. I thank God that I have seen with my eyes this day that this people have been ready to vote to sustain me in an action that I know, in one sense, has pained their hearts. Brother George Q. Cannon has laid before you our position. The Lord has given us commandments concerning many things, and we have carried them out as far as we could: but when we cannot do it, we are justified. The Lord does not require at our hands things that we cannot do. \* \* \*

Our nation is in the hands of God. He holds their destiny. He holds the destinies of all men. I will say to the Latter-day Saints, as an Elder in Israel and as an Apostle of the Lord Jesus Christ, we are approaching some of the most tremendous judgments God ever poured out upon the world. You watch the signs of the times, the signs of the coming of the Son of Man. They are beginning to be made manifest both in heaven and on earth. \* \* \*

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C. H. KALISE PHOTO

INTERIOR OF SALT AIR BEACH PAVILION, GREAT SALT LAKE.



as that which had appeared, and now that it had come, he was glad, and resolved to accept it as being issued in good faith.

It was the 7th of October—the day after the close of the Conference at which the Mormon people had ratified the manifesto—and Judge Zane was occupied in the examination of applicants for citizenship. Up to this time he had rigidly adhered to the rule established by Judge Anderson's decision of November, 1889, that Mormon aliens were ineligible for naturalization. Thomas Jackson, a Gentile, was before the court, answering questions propounded to him by the Chief Justice. Among other things he was asked if he believed or had ever believed in polygamy.

“No, sir,” answered Jackson.

JUDGE ZANE.—“I will ask you a question (without wishing to be understood that I make it a test now) merely for the purpose of basing some other questions upon it—Are you a member of the Church of Jesus Christ of Latter-day Saints?”

MR. JACKSON.—“No, sir.”

JUDGE ZANE.—“That this last question may not be misunderstood, I will say that in naturalizations I am now disposed to take judicial notice of the statement made by the President of the Church of Jesus Christ of Latter-day Saints in his manifesto of the 24th of September last, \* \* \* and his advice therein to the members of the Church of which he is the head; \* \* \* also of the resolution of the General Conference of the same denomination, in which it is declared that such advice of its President was by authority and is binding upon its believers; and that such President is the only earthly instrumentality through which that advice can authoritatively come to them. \* \* \* My confidence in human nature and charity for my fellow man, lead me to accept such a solemn declaration and the expression of such a good purpose as being honest and sincere. Hereafter, I will not make the simple fact that an applicant is a member of the Mormon Church a bar to his admission to citizenship.”

A little later Judge Anderson took similar action in the court

over which he presided; sustaining the Chief Justice in his modified policy, and reversing his own ruling of nearly a year before; and this without further inquiry into the alleged Endowment House oath, the ostensible basis of the remarkable decision making membership in the Mormon Church a bar to naturalization.

The fall of 1890 witnessed the final struggle between the Liberal party and the party of the People, for the election of a Delegate to Congress. The Liberals nominated as their candidate Judge Goodwin, the veteran journalist, editor-in-chief of the Salt Lake *Tribune*. The People's party nominated Hon. John T. Caine, the sitting Delegate; also a newspaper man, formerly editor of the Salt Lake *Herald*. "Mormon disfranchisement" was the keynote of the campaign, and on that issue the battle was fought. It resulted in the usual overwhelming victory for the People's candidate. Without the disfranchisement of the Mormons, the cause of the Liberal standard-bearer was hopeless, and the scheme for their disfranchisement had failed. The principal factor in producing that failure was President Woodruff's manifesto, which, with other events that followed, was accepted by the Government and the Nation as the solution of the long pending Mormon problem.

It is not the author's purpose to here portray the wondrous changes that have taken place since the issuance of that notable declaration. At some future time it may devolve upon him or some abler pen to chronicle the many interesting events that have crowded like waves upon the shore of history since the close of that memorable year with whose *finis* this record must end. It will be the pleasant task of such a writer to trace the various steps in the marvelous transition through which Utah has passed since this author began the work of preparing for the press these volumes. He will tell how the People's party, and subsequently the Liberal party, disbanded, and how their members, without reference to former differences and affiliations, divided upon national party lines as Democrats and Republicans. He will tell how our Mormon and Gentile Democrats, under the new order of things, elected the





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SALTAIR BEACH PAVILION. GREAT SALT LAKE.



first Delegate to Congress; and how our Mormon and Gentile Republicans, reinforced, and returning to the charge, succeeded in imparting their complexion to the next Legislature. He will also tell how, by act of Congress, the Mormon Church property, forfeited and escheated to the Government, was restored to its rightful owner, and how the heavy bail exacted and forfeited in the Cannon case was in like manner returned. He will relate how a Republican President, and after him a Democratic President, issued pardoning proclamations to Mormon polygamists; how Utah's Delegate introduced into Congress a bill for the Territory's admission as a State, which bill, after passing House and Senate without opposition, was promptly signed by the Democratic head of the Nation; how the same high official approved the Enabling Act authorizing our citizens to frame a State Constitution, and how the Republicans of Utah elected the next Delegate to Congress and a majority of the members of the Constitutional Convention. The historian of the future will also record how the Constitution framed by that Convention was approved by the President of the United States, and Utah at last admitted to her rightful rank and station as a free and sovereign commonwealth of the American Union.



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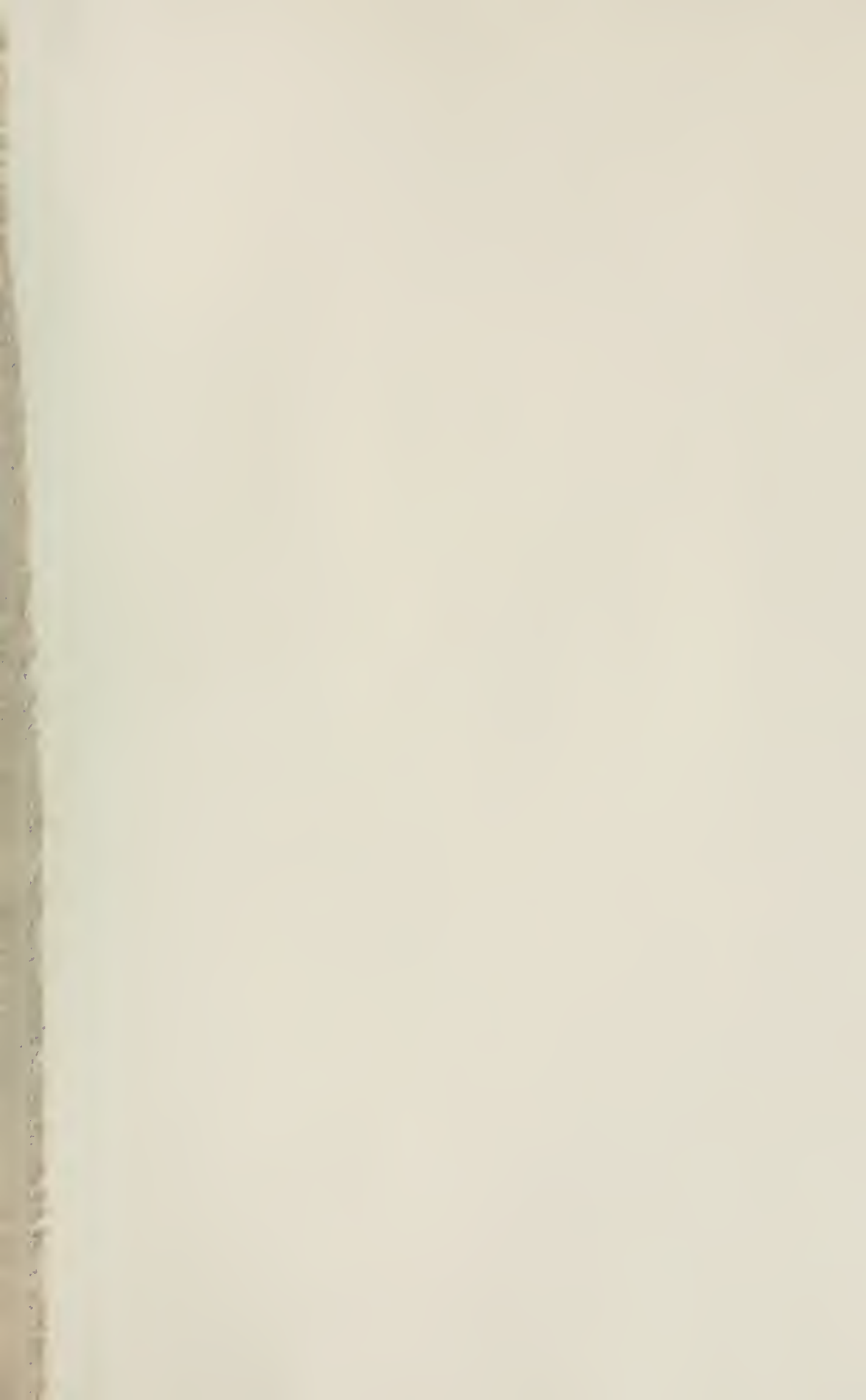


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