

A RARE JUDICIAL SERVICE OF CHARLES S. ZANE.

BY JOHN M. ZANE.

Judge Zane passed many of his active years in Illinois,- but had it not happened that he was appointed in 1884, Chief Justice of the Territory of Utah, there would probably have been nothing in his life to characterize his judicial service as rare, and naturally, therefore, any notice of his life must be mainly concerned with his service as a Federal Judge. As a judge in Illinois his performance of his duties would present no features more interesting than would that of many another good judicial officer. But in Utah the field was altogether different, and offered opportunities to a man of his characteristics. In describing his work in Utah, I hope that I may visualize for others the attractive personality whom not only his family but all his friends loved and revered, and that I can explain the strange surroundings where his unique judicial service was performed.

The relation of these strange surroundings must begin as far back as 1820, when two angels of the Lord, presumably winging down from Heaven, alighted in a small community in Western New York, seeking a boy of fifteen named Joseph Smith, with an important message. One angel would have been enough, but two angels give undoubted verisimilitude to the mission. Joseph was told by the heavenly envoys that he must reserve himself for special work, and that he must not join any religious sect whatever. The boy was obedient, although displaying at times tendencies toward the Hard Shell Baptists, and the preliminary warning was fulfilled seven years later by another angel named Moroni, who led Joseph to the hill of Cumorah, near Palmyra, New York, and there disclosed to him golden plates, whereon was written in "reformed Egyptian" the history of the lost tribes of Israel. They had sailed over the ocean by means of a compass, a startling anachronism, and had reached not Scotland, as the wits contend, but South America. On this continent, the better part of them had been wiped out by the worse part, leaving their history of misfortune written on the golden plates. The angel had thoughtfully provided with the plates, in order that Joseph could decipher the "reformed Egyptian," a pair of stone spectacles, called after the most mysterious thing in the Old Testament, the Urim and Thummim.

By virtue of these plates and magic spectacles, which never turned up later, Joseph claimed to be the Prophet of the Lord "in these latter days," and he at once announced the new dispensation, and the new means of salvation through faith in

Joseph, to supersede the original redemption by the Saviour, which was apparently assumed to be a complete failure.

Joseph found followers in those days of Stygian darkness, when it was an easy matter to found a religion, for he had other unusual powers. He could summon spirits from the vasty deep and they came when he called. He summoned the angel Gabriel to confer upon him the Aaronic priesthood, and the apostles Peter, James and John were called from Heaven to induct him into the preposterous priesthood of Melchisedek. His apostolic succession was thrice fortified, and had presumably three times more authenticity than that of even the successors of St. Peter, who wear the triple crown and seal with the signet of the Fisherman.

The story is well known, how Joseph first led his flock to Kirtland, Ohio, thence to Missouri, and how they were driven to Illinois. Friction arose with the Mormons in this State but the sect might have remained a wholly harmless exhibition of the maxim, *Credo quia absurdum*, (I believe it because it is absurd), had Joseph* not cast eyes of longing upon the maid servants. He had neither rounded Seraglio Point nor passed Cape Turk. Being unusually fertile in obtaining revelations from the Almighty, he produced that Pandora's box of evil, the revelation which authorized a superfluity of wives. The grammar of it was patently that of Joseph, not of Omniscience, and it was wisely addressed to Emma, Joseph's wife, the person most concerned. This was, in itself, a proof of its verity. It indicated to Emma that for Joseph, more than one wife was desirable. It is sad to think that Emma failed to rise to her opportunities. A robust resistance on her part, supported by adequate muscular activity toward the erring Joseph, would have spared the Mormons much suffering and Joseph might have lived on, a wiser and a better man. But she failed and when this revelation was known, a row among the Mormons ensued, in which outsiders took a part. It ended in the death of Joseph and his brother Hyrum at the hands of a mob, and the emigration of the Mormons to some region out of the United States, where the wicked would cease from troubling. They settled in the Salt Lake Valley in 1847, and were then in Mexico. The successor prophet, Brigham Young, by divine guidance revealed this spot to be the unmolested abode of his people. Here was the fresh water Utah Lake, a veritable Sea of Galilee, and out of it the river named by them the Jordan, flowed down to the Dead Sea, the Great Salt Lake. It was a repetition to the Mormons of the physical features of the land where the Saviour lived and wrought. Here, the Lord's mouth-piece told them, another Zion would arise with the white walls of the Lord's temple, and streets bathed by the living waters of the streams. But in 1848, when all the Mormons had gotten there across the desert, the supposed divine guidance turned out to be a mockery, for the Mormons, by our treaty with Mexico in 1848, were all back again in the United States.

From 1848 to 1884, when Judge Zane went there, the Mormon community greatly expanded. They were through their missionaries indefatigable and successful proselytizers, among a certain class of people both in this country and in Protestant European countries. Their success was considered sound proof of divine favor. The leading Mormons, imitating the Prophet, had repeatedly appropriated for themselves the benefit of Joseph's revelation, and the infant industry was prodigious, yet so far as statistics show, even Brigham Young, whose progeny was numerous, did not rival the record of Augustus the Strong, Elector of Saxony, who was credited with three hundred and fifty-three children; but he certainly never boasted divine promptings.

The Mormon expansion covered the valleys of that arid region, wherever water for irrigation could be obtained. The soil was rapidly brought under a high type of cultivation and various communities prospered. The land had a beauty of its own, with its valleys nestling among lofty mountains, the clear atmosphere and the brilliant sun and unclouded blue sky of the desert. At evening the last rays of the sun, and soon the brilliant coloring in the sky and the purple glow on the mountains make a scene of indescribable beauty. The people were simple in their tastes, inured to privation, frugal and industrious, fanatically believing in their new religion, fully persuaded that everything they heard from the pulpit was directly inspired from on High. They were assiduously indoctrinated with the beauties of polygamy and the blissful ministrations of plural wives were the reward of devoted church service. The government of the Mormon communities was theocratic, centralized, in fact, in the head of the church. All avenues of promotion lay through the church and religious eminence went hand in hand with earthly acquisitions. It was the doctrine that no woman could attain celestial glory unless she were sealed to some man, and it is a melancholy fact that the women were fatical believers in fractional parts of a husband.

Every Mormon was persuaded that his sect was hated and persecuted because it alone had the true faith. The church had its noble army of Martyrs, headed by the sainted Joseph. They desired to be let alone to govern themselves in their remote mountain region and were not above claiming that they were protected in their practices by the constitution of our fathers. Their religion was proscriptive, and the denial of any part of the Mormon creed was equivalent to eternal damnation. Apostasy from the church was an unforgivable crime, yet the steadfast courage of certain apostate's will always remain an inspiring lesson in human fortitude. Gradually behind the peculiar practice of polygamy was massed the whole power of that community, The great number of polygamous wives and their children, who could find no excuse for their own existence, except in the heaven-sent

doctrine of a plurality of wives, furnished enthusiastic support to the doctrine.

Isolated as they were, it was easy to work out a rigid rule of the priests. They kept the forms of democratic government, but a few imperious old men held all the keys and ruled with an iron hand, but it is to be said that these men, headed by Brigham Young, were of remarkable abilities. As time rolled on and the Mormons waxed strong, and the priestly rule over the people grew more despotic, they became a formidable difficulty to the general government, which had plenary power over the Territories. A polygamous community in a monogamous country was a scandal to government. But Federal officers were driven out of the Territory, the expedition of Johnston's army proved abortive. At last the discovery of the precious metals in the mountains brought a non-Mormon population, called Gentiles by the Mormons. Even the Jews found history reversed and themselves supplanted as the chosen people and classed in Utah as Gentiles. These Gentiles, comparatively few in number, lived in a bitterly hostile community, and were looked upon as offensive interlopers in Zion. That portion of the earth and the fullness thereof belonged to the Mormons by divine designation.

Gradually the story of the dark, bloody and cruel deed of the Mountain Meadows Massacre came out of Utah and aroused the country, nor could the moral sentiment of the land endure this polygamous disgrace. At last in 1882 the Edmunds Law was passed by Congress, but nothing was done until 1884, when the Chief Justice lately appointed by President Arthur reached Salt Lake City in August of that year. In the next month he opened court, for the three United States judges held separately the nisi prius courts and sat together as the Supreme Court.

Judge Zane was then fifty-two years of age. He had been born in New Jersey of a line of Quakers resident since 1676, in the United States. He had come, a very young man, to Illinois. He had had a few years of what approximated a liberal training at McKendree College; he had taught school and had then read law and been admitted to the bar. After practicing for fourteen years, he in 1872 was elected Circuit Judge on the Sangamon Circuit, and was reelected in 1878. He had thus had twelve years of judicial training. It was before a bar that was second to none, in Illinois. Such names as Logan, Palmer, Cullom, Stuart, Edwards, Hay, Green and McClernand, not to mention others, both at Springfield, and in the rest of the Circuit, are an indication of what the bar was. These able and brilliant lawyers had daily practiced before him and in addition to a sound knowledge of the law, he had gained from judicial experience the poise that comes to those judges who are able to improve by the work of a great bar.

There are lawyers still living who remember him as a judge in Illinois and who knew his eminent capacity. The fundamental qualities of strict integrity, patience and courtesy he had, of

course. But he had that rare judicial cast of mind, which can suspend judgment, which can listen without making prepossessions, which can hear all the facts and considerations that surround a case or a question, and then reach a reasoned conclusion. I do not think I am misled by a son's partiality when, after an experience of many years in many courts, -before all kinds of judges, I say that I have never seen another judge of his perfect calmness and poise of judgment, of his absolute colorlessness in the performance of his duties, without passion or bias or prejudice. To this was added great penetration of mind, and originality of thought, the sifting clearness of intellect that resolves difficult situations and "the calm eye that seeks, 'midst all the huddling silver little worth, the one thin piece that comes pure gold." He had, too, a remarkable industry. His work was never in arrears. Cases were decided when they were argued, or immediately thereafter. He was able to follow this course, for all his opinions, except in the Territorial Supreme Court, were oral. He had a remarkable gift for oral disquisition, by thinking the matter out clearly and giving utterance to it in an orderly and legal way. He could upon occasion be remarkably eloquent. But all this would not have made his career in Utah, had he not had an absolute courage and readiness to meet difficult questions. Disagreeable as a duty might be, he met it without hesitation. He never paltered with his conscience, nor compromised with his duty. His desire to keep up with his work led him to go to his office almost every night to work upon matters before him. Regularly about ten o'clock he would come down from his office and walk up the street to his home. Many Gentiles thought that he was in danger, but he dismissed the idea as absurd. He never knew that the two well-dressed men, who almost every night seemed to be strolling up the street after him, were a pair of cool-headed faro dealers of accurate shooting proclivities, who had assumed the duty of taking care that the judge suffered no harm. He once told me that they were, he thought, mining men.

It was a lesson in all the judicial virtues to see him preside over a court. A fine, clear cut countenance, a slim erectness of figure, never disfigured by the obesity of age, made him a handsome man. He looked composed and serene, the picture of judicial impartiality and the embodiment of the law. His appearance begat confidence and respect. All things moved with deliberation and order. He had the reserve and dignity that belong to the office. No one became familiar with him. He had no confidants. No lawyers ventured to impose upon his indulgence. The swash-bucklers of the bar at Salt Lake City quickly learned that this judge could neither be browbeaten nor mislead.

Yet there was nothing austere about him. He was a man of the simple, gentle, direct manners that come from a kindly heart. He was merciful and humane, a truly civilized man. He could have been written as one who loved his fellow men. Never to him did it seem necessary to comment on the weak, the low or

the mean characteristics of other men; he sought, rather, what was good and worthy in all men. He uniformly spoke no evil; he spoke what he could of good. He was genuinely interested in human beings and he had the blessing of sympathy with others. He hoped for the best in men and women, but did not allow himself to be deceived as to their worst. While he knew that often there is a world of good in things evil, he knew that there is no less often a world of evil in things good.

His attractive character with perfect affability was the secret of his popularity among all classes of men. There was something about such a character, its straight-forwardness, manliness, kindness, geniality and consideration for others, that appealed to all kinds of people. All men instinctively liked and respected him. This came to be true of the Mormons. Even little children who did not know him, seeing him walking along the street, would come up and take his hand and walk and talk with him as confidently as with their own parents. I think that he never had an enemy in the sense of one who bore him malice.

Another thing about him was his absolutely correct life. I do not suppose that he ever intentionally did a wrong thing. He was perfectly truthful, always rigidly moral, never an associate of unworthy men, never guilty of conduct not befitting his judicial position. He seemed to his family a model of what father and husband should be. Self-restraint and self-control in conduct, moderation and calmness in statement and an unshakeable composure, such as he had, are not often seen.

One trait or rather cast of thought was to be of signal advantage to him in his judicial work in Utah. While he had inherited the virtues in private life of his Quaker ancestry, he had not inherited any of their religious ideas or beliefs. He was an absolute agnostic, yet he believed, as the ancients believed, in the immortality of the soul. He was certainly not a Christian in the sense of the Trinitarians. He had no belief in the doctrine of redemption or of salvation either by faith or by grace. Yet he was firmly persuaded of the good in all Christian sects. He could meet the Jews on common ground. He never found it necessary to seek to interfere with any belief, and he was glad that another could find comfort and sustaining power in a creed that gave him intellectual offense. All religious sects seemed to him to require an amount of belief, as he would say, that his mind was not so happily constituted as to attain. He rarely was found in a church, yet all the preachers and sectarians were his friends, and all of them wished that the virtues of his life could have been a tribute to the efficacy of the faith, in which they believed.

This detachment from religious prepossessions was of especial value among the Mormons, for whatever he was required to do was untinged by any of the sectarian's hatred of a peculiar religion or of peculiar beliefs. He may have thought them unwise, but their religion was not offensive to him because it denied the very basis of Christianity. If one preferred to be redeemed

by faith in Joseph or to be baptised for the unredeemed dead, he could give him an indulgent smile. Federal justice in Utah had been too often tinged with sectarian hatred of the Mormon beliefs and the Mormons had the feeling that judges were anxious to punish them for belief in a religion that was essentially not Christian, and were denying to them for that reason the equality of the laws.

As a matter of fact, the Mormons were at an advantage in arguing with orthodox theologians, who went on the Bible, the whole Bible and nothing but the Bible. The Mormons accepted literally every word of the Old Testament as absolute truth, and the examples of worthies like Abraham or David or Solomon drawn from the Old Testament to support polygamy were difficult to be answered by Fundamentalists; but when the Mormons went so far as to venture to cite, as they did, the Saviour as a polygamist married to Mary and Martha, argument seemed to have degenerated into blasphemy. The Mormon Pantheon had almost as strange inhabitants as the pagan Olympus. Even Adam whose disobedience, according to Fundamentalists

"Brought death into the world and all our woe
With loss of Eden,"

figured as a God in the Mormon heaven. Whether Eve was a goddess I have never been able to ascertain.

Toleration of all kinds of beliefs is practically the highest type of mind that civilization produces. It is the standpoint of the law to regard religious beliefs, where they do not depart into unlawful acts, as wholly indifferent to the law. To Judge Zane, beliefs might be absurd, but he did not consider a man necessarily a fool, because he believed in a foolish religion. The constant miracles of the Mormons did not trouble him, because all miracles were alike unbelievable. His Deity worked in other ways, but he was incapable of a harsh word against any honestly held religion, the simple faith of a simple folk. It had happened that Judge Zane in his years of early manhood immediately prior to President Lincoln's election in 1860 had seen not a little of that extraordinary man under exceptional circumstances. He had a number of times been with Mr. Lincoln when he had gone to different places near Springfield to make political speeches. He was with him when the news first came to Springfield, that the Chicago Convention had nominated this man who was to stand on a level with Washington. He had seen the President in Washington after he assumed the heavy duties of guiding the country. The loving veneration with which Judge Zane cherished his memories of Mr. Lincoln seemed to expand into the thought that he must never do anything unworthy of one who had enjoyed the friendship of that blameless and exalted soul. Perhaps it was from President Lincoln that he gained his **first** lessons in self-control.

Such was the man to whom fell the task of presiding as a judge, backed by the unlimited power of the Nation, over **the**

enforcement of an obnoxious law among a strange people, worshipping strange gods, under an almost alien sky. While the law must be enforced, while the unlawful practice of polygamy must be repressed along with all other crimes, it must be by legal means, by the ordinary judicial processes; all appearance or even suspicion of religious hostility must be carefully avoided, for these people must be persuaded of the justice of the law and of the justice of punishment and must not be alienated from the government. The task was to bring them in the end to such a condition of mind that they would of themselves willingly abjure a practice which they should come to recognize as wrong and unlawful. This from the beginning was what Judge Zane consciously had in mind. He left behind him several closely written volumes of diaries, which are an exact statement of his ideas from day to day. It is but just to say that these Mormons had virtues that rendered this result possible, if the situation should be properly handled. But first, let me ask, can any one point to a case where a religious practice founded on a religious belief, has ever been put down by the strong hand of the law, and has not left a festering sore, or a legacy of hatred and discontent? It is on account of the different result in this instance that I call this paper an account of A Rare Judicial Service. I shall indicate in a general way what Judge Zane did to insure the desired result.

The first question that arose was in regard to the challenges to grand and petit jurors. It was apparent that in a Mormon case, no Mormon grand juror would vote to indict. The law had provided a ground of challenge to jurors, but an array of legal talent maintained that the law did not apply to grand jurors. The court was called upon to rule whether it was a good ground of challenge that a juror conscientiously believed in the practice of polygamy as a religious duty. It was strenuously urged that such a test based the grand jury qualification upon a religious belief, and would bar Mormons from grand juries considering all kinds of crimes. The court, however, in a masterly opinion, held that the law having defined polygamy as a crime, a belief in the lawfulness of a crime was in itself a ground of challenge to a grand juror passing upon the crime. This ruling resulted in only Gentiles being eligible either as grand or petit jurors and swept away at once the ability of the Mormons to block prosecutions.

The court's oral charge to the Grand Jury that followed could be classed as a great state paper. It was explained that the law defined polygamy and unlawful cohabitation as crimes, and the court stated why it was that the belief in a religious right to commit a crime could not be accepted by the courts of law as a defense to the crime. An eligible grand jury was empaneled and found many indictments. Those polygamists who could do so, went into hiding and many of their plural wives were driven into concealment.

Then came the question as to what was meant by the **words** unlawful cohabitation in the description of a crime. If it **was** intended by the term to define simply the offense against **good** morals of cohabitating with more than one woman, the law would have been a nullity, and from difficulties of proof it would have been incapable of enforcement. The court from the history of the act and the evil intended by it to be remedied and from the language of the law, defined unlawful cohabitation to be the maintaining of the status of a polygamist, shown by the dwelling with more than one wife in the habit and repute of marriage. This simplified the crime into one that could be proved by the simple fact that a man lived in such a condition that he created for himself, the reputation of living with more than one wife.

Another attempt to block prosecution was futile. The jury list provided by the statute was exhausted and the court had no jurors. The resort to an open venire for jurors was claimed to, be interdicted by the statute, but the court held otherwise in the first case tried and this obstacle was removed. It may seem absurd that such a question was raised, but it was raised and carried to the Supreme Court of the United States, which found no difficulty in affirming the ruling.

Another proposition was whether the alleged polygamous wife could be compelled to testify. The Edmunds law, very carefully and wisely drawn, had denounced no offense against the polygamous wife who was herself always unmarried when she became a plural wife. In the first trial the question arose. A leading Mormon was being prosecuted for the two offenses of a polygamous marriage and unlawful cohabitation. After a jury had been empaneled and the fact of the defendant's marriage to his first and lawful wife had been proven, the polygamous wife was called to the stand and was asked the question whether she had ever been married to the defendant. She refused to answer. It was a remarkable scene. The witness was an innocent-faced, ox-eyed, red-cheeked, buxom looking young woman, who had been told what she must do. She sat upon the stand in a defiant attitude and refused to testify after the court had instructed her that she should answer the question. The court room was crowded with Mormons, it was late in the afternoon, the shadows were beginning to fall and in deep silence, with everyone straining forward to hear, the judge turned to the witness and talked to her with all possible kindness and indulgence. He explained to her what her duty was under the law, and that the law could never permit a witness to refuse to answer questions which were lawful and right in themselves, that it was the duty of every witness to state the truth, that if she stated the truth no one could blame her, but if she declined to perform her duty under the oath she had taken, it would be his duty to sentence her to jail as a common malefactor, to remain imprisoned until she did answer the questions, whether it be for days or months or years. His firm and solemn words had something of the inexorability of fate, as he told her how idle it was for her to suppose that she

could defy the court or her country's laws. The witness was now in tears. Then, as much for the Mormons present as for the defendant, he referred in scathing language to a man who would lead a young and innocent woman into such a forlorn situation in life that she could not state whether she was married or not, and would be willing to induce her to take a position, where she must suffer imprisonment in order to shield him from the consequences of his crime, that such conduct showed a moral cowardice that would be disgraceful to any man of correct feeling. He told her that she would go in the custody of the marshal, and that she should consult legal advisers as to what she ought to do, that in the morning she would be brought into court again and given an opportunity to answer. Simply by his manner of humanity and kindness in delivering a warning that seemed firm and inexorable and by his tact in dealing with the situation, he made it impossible for the Mormon men to shield themselves in such a way. In the morning the witness was brought in. She testified as to the bigamous marriage and as to the fact that she had lived with the defendant as his wife. Clawson received a severe sentence and was denied bail pending his appeal and when he brought the matter before the Supreme Court of the United States, he found that Judge Zane was right in denying him bail, and in issuing the open venire.

But it was in the matter of sentences that he showed the most tact. The defendant, when called for sentence, would be allowed to express himself fully as to why he should not be sentenced. Many a foolish tirade was made in self-justification, but the answer from the bench was always unanswerable in exposing the folly of a defendant who attempted to make a law for himself, contrary to the law of the land. If he could do this for his own type of crime, others could claim it for other crimes and all equality before the law would cease to exist. He told them that their proudest boast ought to be that they were citizens of a great country and obedient to their country's laws. These oral exhortations from the bench were many of them of the most eloquent and moving character. They made a profound impression upon the rank and file of the Saints. The defendant, if he answered that his intention was in the future to obey the law, was sentenced under a very light penalty, but if he was contumacious in saying that he would not obey the law, he received the extreme penalty. The constant rulings and the exhortations from the bench created an atmosphere around the practice of polygamy that gradually made polygamy obnoxious to many Mormons. And at the same time, the law became an infallible machine, where no guilty man could escape. At last Congress, in 1887, passed the act forfeiting all the property of the Mormon Church. This law was attacked as unconstitutional. The cause was argued for the Mormons by Mr. Broadhead of St. Louis and Senator McDonald of Indiana, very noted lawyers. Judge Zane wrote the opinion in the Supreme Court of Utah. It was affirmed

in the Supreme Court of the United States, and this drastic law was sustained. The cases in the Supreme Court of most importance are *Clawson v. United States*, 113 U. S. 143, and 114 U. S. 447; *Cannon v. United States*, 116 U. S. 55, and *Church of Jesus Christ of Latter Day Saints v. United States*, 136 U. S. 1. But affirmances of his rulings in other criminal and in civil cases were quite numerous. Singularly enough there was, I think, but one case, in which he wrote the opinion, that was reversed by the Supreme Court of the United States and that was one of his finest opinions, holding the Utah law allowing another number of jurymen than twelve and not requiring unanimity, in civil cases, was not contrary to the Federal constitution. Most lawyers today of liberality of thought would think that the Supreme Court was too narrow and unenlightened in its ruling.

The result of these rulings was that practically every Mormon polygamist went to the penitentiary and wore the stripes of a convict. The pressure from the courts became such that it was impossible for the Mormons after a few years to withstand it. But this pressure was shorn of all appearance of religious persecution. Everything was kept on the high plane of the law. Gradually the Mormons came to have an intense respect for the Judge. They saw him in all civil cases, and every other kind of a criminal case, eminently fair and just and enforcing the laws that Mormon legislatures had made, they felt the influence of his character so fully, he was able to impress the Mormons so thoroughly as a just and sagacious mind, that the greater part of them felt that he was right. At last the demand for obedience to the law from within the Church itself, became so great that the Mormons themselves were led to abolish their polygamous practices. One Sunday in the great Mormon Tabernacle, in the presence of an immense throng of the faithful, who knew that some important matter was to be heard, the President of the Church, Wilfred Woodruff, arose to announce that he had "wrestled" with the Lord in prayer and that the Lord had spoken to him. He was a plain, earnest, simple looking old man of rustic bearing and bucolic aspect, who had become by the law of seniority the President of the Church, what the Mormons tautologically called their Prophet, Seer and Revelator. He announced to the listening thousands that the Lord had told him that the time had come to relieve his chosen people from their sufferings and the burden of "living their religion" and thereafter it would be unlawful and against the doctrine of the church for any Mormon to celebrate or to enter into a polygamous marriage, and unlawful for any Mormon to live with more than one wife in the habit and repute of marriage; Thus polygamy and the continuance of the polygamous relation were voluntarily abolished by the Mormons themselves. It is true that the revelation of the Lord was then put to vote in that vast assemblage, and fortunately the vote sustained the Lord without a dissenting voice.

I venture to say that this was the first time that a decree of the Almighty was required to be endorsed by a town meeting.

Now came the crucial time, for if the Gentiles and the country were not willing to accept this authoritative engagement by the whole Mormon people, it was apparent that the only opportunity to compose the situation would be lost. The Gentiles were sadly divided, the more bitter class among them contending that the revelation was a mere blind and that the engagement was not made in good faith. Whether the Seer and Revelator actually believed that he had talked with God or not, he gave the impression of absolute sincerity. But who will undertake to say what are the movements of a man's mind, especially if he be a very religious man?

Judge Zane was clearly persuaded that there was but one thing to be done, and he lent his position as Chief Justice, his great weight, reputation and experience to the loyal acceptance by the government of the abandonment of polygamy as an expression of honest intention by the whole people. I remember well his quoting to me Burke's famous phrase that he did not know how to draw an indictment against a whole people. In the years that had passed he had constantly told them that all the government asked was their abandonment of an unlawful practice, and that statement he was prepared to maintain.

The event showed that the Mormons as a people were in good faith and that his acumen had not gone astray. They took steps to disband their political organization and were anxious to bring themselves in accord with the rest of United States. Their naturally law abiding disposition outside of their peculiar practice offered a sound basis for good citizenship. They showed no disposition to seek revenge for any of the sufferings which they had endured, and this is probably the highest praise that can be given them. They showed that they had the Christian virtues by their works at least, however much their religion might differ from the orthodox formula of the atonement. In a few years the situation became composed, and the old struggle ceased to trouble men who had been wearied by it. It was given to Judge Zane to see the mature fruits of his work and to be the most important factor in closing the struggle, and in no respect was he entitled to more gratitude than for his firmness in accepting the situation.

Utah was admitted as a State and the first election that was held resulted in the election of Judge Zane to its Supreme Court. He received the highest vote cast for any candidate, upon either of the tickets. This is the best commentary upon the efficacy and healing character of his judicial work, and of the trust and respect that had come to be felt toward him by the Mormon people. I cannot be mistaken in thinking this to be the very highest proof that severity can, by a happily tempered spirit, touched to fine issues, be so used that even those who have suf-

ferred, will recognize that severity may sometimes have quality of mercy.

His popularity among the Mormons was and remained as great as it had ever been among any set of people among whom he had lived. This was due as much as anything else, to the fact that he had been able to impress them with his absolute fairness and justice. He had proved to be a better guide than their own misguided leaders who claimed direct inspiration from the Lord.

In 1900 he left the bench and lived for seventeen years the life of a private citizen among the very men and women who had at the beginning complained so bitterly of his seeming harshness. He never had reason to complain that the Mormons resented anything in his conduct. He enjoyed from them a singular deference and good will, as creditable to them as it was to himself. Today these "old unhappy things" are almost forgotten. But the historian who at some future time shall write the history of the Mormon people, without bias or bitterness toward either-Mormon or Gentile, must write in letters of light the name of this upright and fearless judge, as a benefactor most deserving of grateful remembrance both by Mormon and by Gentile. He has now gone to his reward and whether the soul be undying or not, he can, at least, be said to be one

"Of those immortal dead who live again
In minds made better by their presence."

Judge Zane died in 1917 at Salt Lake City, where he had continued to be *clarum et venerabile nomen*. Death came to him in the form that Caesar wished for, a sudden and painless death without warning. Though eighty-five years of age, he was still in the possession of his bodily strength and health, with a mind, unworn, undebased, undecayed. In the fulness of

"An old age, serene and bright,
And lovely as an Alpine night,"

he fell back stricken with a cerebral hemorrhage and instantly and painlessly expired. He is buried at Springfield, Illinois, in her lovely City of the Dead, where repose so many others whose bodies are buried in peace, but whose names should live forevermore.