NINE IS A SUFFICIENCY.

Utah's New Jury Law Is Declared Constitutional.

AN IMPORTANT RULING.

The Law Is in the Line of Progress, Say the Judges.

Verdicts in Civil Cases May Be Found by Three-Fourths of the Jury, and Litigation Will Be Expedited—Court Notes.

The supreme court met at the usual hour yesterday morning, with all members present except Judge Miner.

Judge Zane read the opinion of the court in the case of H. A. Hess & Company, appellants, vs. Margaret White, administratrix, which was appealed from a verdict of ten jurors, upon the ground that the verdict was rendered in a manner not authorized or warranted by the constitution of the United States applicable to Utah territory, etc.

The opinion, which is one of unusual interest, especially to the legal fraternity, is as follows, in full:

"*Per Curiam:* This was an action at law brought by the appellants against the respondent to recover upon a written guaranty to pay for goods sold and delivered to one Francis Brown. The guaranty was executed by the respondents intestate. The cause was tried by a jury regularly impaneled.

"After the jury had deliberated upon their verdict, they brought into court a verdict signed by ten of their number, but two of the jury dissented from it, and refused to sign it. The appellants objected to the entry of judgment upon this verdict 'because the verdict was rendered in a manner not authorized or warranted by the constitution of the United States applicable to the territory of Utah, but contrary thereto in that said verdict was not a unanimous verdict, but was agreed to by ten of said jurors only and is therefore illegal and of no effect.'

"Judgment was entered upon the verdict, whereupon a motion for a new trial was made, and as ground therefor, the same objection was urged. The motion for a new trial was overruled and appeal taken to this court.

The sole question argued upon appeal is whether a verdict rendered by ten out of twelve jurors is legal under the constitution and laws of the United States and under the laws of the territory of Utah.

The clause of the constitution relied upon is the Seventh article of amendments thereto: "In suits of common law, when the value in controversy shall exceed $20, the right of trial by jury shall be preserved." The laws of the United States applicable are cited, as follows: Section 17 of the organic act, which provides: "That the Constitution and laws of the United States are hereby extended over and declared to be in force in said territory of Utah, so far as the same or any provision thereof may be applicable." This section was approved September 9, 1850. Also section 1891 of the Revised Statutes of the United States, which enacts: "The constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within all the organized territories, and in every territory hereafter organized as elsewhere in the United States." Also there was an act in force April 7, 1874, which provided, (18 Stat. L. 27) "That it shall not be necessary in any of the courts of the several territories of the United States to exercise separately the common law and chancery jurisdiction vested in said courts; and that the several codes and rules of practice adopted in said territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all cases, whether legal or equitable, be confirmed; and that all proceedings heretofore heard or taken in said courts in conformity with said codes and rules of practice, so far as relates to the former and mode of proceeding, be and are hereby, validated and confirmed; provided, that no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law."

"At the time this last statute was passed there was a law of the Territory of Montana, which authorized the rendition of a verdict upon the concurrence of three-fourths of a jury. This law had been enacted in January, 1869.

"The law of the Territory of Utah was passed under the grant of legislative power in the Organic act, section 6 of which provides: 'that the legislative power of said territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act' and "that all the laws passed by the legislative assembly and governor shall be substituted to the congress of the United States, and if disapproved shall be null and of no effect."

In pursuance of this grant of legislative power, section 493 of the code of civil procedure, which is section 3371 of 2 compiled laws of 1888, 286, in force August 1, 1881, provided: "When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury and the inquiry made whether it is their verdict. If any juror disagrees, they might be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If any one answer in the negative, the jury must be sent out again."

"This statute had superceded section 174 of an act approved February 17, 1870, compiled laws of 1876, 447, which provided: 'When the verdict is given, which must be unanimous agreement, except by the consent of the parties, it shall be read aloud, etc.'

"In 1872 the legislation amended section 3371 supra to read as follows:

"In all civil cases a verdict may be rendered on the concurrence therein of nine or more numbers of the jury. When the jury have agreed upon their verdict they must be conducted into court by their foreman. The verdict must be in writing and signed by their foreman, if he is a concurring juror, and if he is not a concurring juror it must be signed by all of the concurring numbers and be read by the clerk to the jury and the inquiry made whether it is their verdict, and the answer may be made by any juror signing the verdict. If more than three jurors dissent, they must be sent out again, and if not more than three jurors dissent, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which shall be done by the judge or clerk asking each juror what is his verdict. If more than three answer in the negative the jury must be sent out again." Laws of Utah 1892, p. 46.

It will be seen that until 1892, the statutes of the territory by express enactment required the verdict of the jury to be unanimous. The original act of 1870 permitted this unanimity to be waived by the consent of the parties, but the act of 1884 was silent upon such waiver.

"It is apparent that the sole question here is whether the provision for a verdict by three-fourths of the jury in a civil case was a rightful subject of legislation consistent with the constitution of the United States, providing that the right of trial by jury shall be preserved. In other words "trial by jury," as used in the seventh amendment of the constitution, means a jury which renders a verdict by the unanimous action of its members?

"It may be remarked that unanimity of action was not considered a constituent part of trial by jury by the framers of the California constitution of 1879, which provided in section 7 of article 1. "The right of trial by jury shall be secured to all and remain inviolate; but in civil actions three-fourths of the jury may render a verdict." This is not preserving the right of trial by jury inviolate if a trial by jury in a civil action requires unanimous action by the members of the jury. At the time the amendments to the constitution were proposed in the House of Representatives by Mr. Madison, the original proposition applied to trial of crime, the express qualification of unanimity for conviction, but did not apply the same to suits at common law. At that period unanimity of action on the part of the jury was not required in Scotland, and such a requisite had been strongly attacked in England by John Locke and Jeremy Bentham. Originally unanimity of action had not been required, even by the common law of England. One of the qualifications of jurors at the time of the adoption of the constitution was that they should be freeholders, yet this qualification has not been considered as a part of the trial by jury, but if the words trial by jury as used in the seventh amendment means a jury trial with all its accustomed requisites, it is difficult to see how the qualification as to freeholders could be changed.

Upon this question the Supreme Court of the United States has, so far as we have been referred, never passed. That court expressly declined to pass on the question in Dumphy vs. Kleinschmidt, 11. Wall, 610, when this precise question was involved in an appeal from the territory of Montana. We are aware that there are decisions in numbers which affirm that a jury must consist of twelve, and a very few that the action of the jury must be unanimous in civil cases. But we think the reasoning of the Supreme Court of the United States in the case of Hurtade vs. State, 110 U. S. 516, upon the phrase, "due process of law," is equally applicable to the case at bar. Mr. Justice Matthews said in that case:

"The constitution of the United States was ordained, it is true, by descendants of Englishmen, who inherited the traditions of English law and history, but it was made for an undefined and expanding future, and for a people gathered from many nations and of many tongues. And while we take just pride in the principles and institutions of the common law, we are not to forget that in lands where other systems of jurisprudence prevail, the ideas and processes of civil justice are also not unknown. There is nothing in Magna Charta, rightly construed as a broad charter of public right and law, which ought to exclude the best ideas of all systems and of every age; and as it was the characteristic principle of the common law to draw its inspiration from every fountain of justice, we are not to assume that the sources of its supply have been exhausted. On the contrary we should expect that the new and varied experiences of our own situation and system, will mould and shape it into new and not less useful forms." And again: "Restraints that could be fastened upon executive authority with precision and detail might prove obstructive and injurious when imposed in the just and necessary discretion of legislative power; and, while in any instance, laws that violated express and specific injunctions and prohibitions, might, without embarrassment, be judiciously declared to be void, yet any general principal or maxim, founded on the essential nature of law as a just and reasonable expression of the public will and of government, as instituted by popular consent and for the general good, can only be applied to cases coming clearly within the scope of its spirit and purpose, and not to legislative provisions merely establishing forms and methods of attainment. Such regulations, to adopt a sentence of Burke's, 'may alter the mode and application, but have no power over the substance of original justice.'

"This reasoning, we believe, is decisive of the case.

"Administrative and remedial proceedings must change from time to time, with the advancement of legal science and the progress of society." Rowan vs. Slater; 30 Wis., 129.

One of the signs of progress is the provision for a verdict by three-fourths of a jury in civil cases.

Wherever this provision has been tried, it has been found to be a distinct benefit. Such a provision is simply a change in the procedure of applying legal remedies. It is general in its application; it is fair and just to all. No man's property rights are injured by it, and no man can be said to have a vested right in the unanimous action of a jury any more than in the fact that a juror was anciently required to be a freeholder. All litigants could waive in civil trials at common law and under our constitution this unanimity of verdict. If they could waive it thus it was not one of the requisites which must be preserved in order to preserve a jury trial in civil actions. For these reasons, because society progresses and modes and legal procedure must change with that progress, because this enactment is a just and reasonable expression of the public will, because it is calculated to be of grert benefit to all classes of litigants; because it reaches justly and fairly and impartially all classes of men; because it is claimed only to be an infringement of a broad and general statement in the constitution, which ought not to be so narrowly construed as to be a bulwork against progress, we hold that this law was a rightful subject of legislation and this judgment should be affirmed.

"We concur:

"ZANE, Chief Justice.
"MINER, Associate Justice.
"BARTCH, Associate Justice.
"SMITH, Associate Justice."

CASES ARGUED.

Arguments were had in the following cases:

J. C. Armstrong et al. appellants vs. Ogden city et al. respondents; argued by H. P. Henderson for appellants and submitted on brief by respondent.

J. H. Meyers appellant vs. L. B. Adams et al.; argued by A. R. Heywood for appellant, E. M. Allison in reply and submitted.

Mary Ruse and Hilda Ruse appellants vs. Alvira Ruse, administratrix of the estate of John D. Ruse, deceased; argued by B. H. Jones and E. M. Allison for appellants and submitted.

OTHER BUSINESS.

Sophia V. Benson appellant vs. Nicholas Anderson et. al.; appeal dismissed.

William Perego appellant vs. William H. Dodge et. al.; remittitur stayed until Monday.

Gilbert F. Boreman admitted to practice.

J. H. Meyers appellant vs. L. B. Adams et. al.; judgment of dismissal vacated.

LITTLE WALLACE BURT.

The Controversy Over His Custody not Yet Ended.

Jones & Schroeder, attorneys for Mrs. A. J. Snyder (formerly A. J. Burt), will call up a motion before Judge Bartch this morning to modify the decree relating to the custody of Wallace J. Burt, her little son, who is at present in charge of William Groesbeck. The modification will be prayed for on the grounds that the mother and her husband are anxious for the custody of the child; that it is not cared for properly by Mr. Groesbeck, and that he refuses to allow the mother to visit it. If the petitioners succeed in getting the matter before the court, a royal battle may be expected.

GLEANED FROM THE COURTS.

New Actions Filed and Judgments Rendered—Court Gossip.

In the case of Wiscomb & Company vs. William Patterson, Justice Gee has rendered judgment in favor of the plaintiff for $216.80.

The conduit suit against the city was on again yesterday, and A. F. Doremus, city engineer, was on the witness stand nearly all day. The end of the hearing is not yet in sight.

The C. B. Durst Grocery company has filed an action against William Groesbeck in Justice Lochrie's court to collect a merchandise bill in the sum of $120.

The examining committee has recommended that D. W. Stafford be admitted to practice in the supreme court.

In the case of Houlahan, Griffith & Morris vs. Matilda Burgess et al., judgment has been rendered in favor of the plaintiffs for $410.25, in the Third district court.

Robert Harkness is suing Joseph S. Barlow and wife in the Third district court to collect $500 on a promissory note secured by a mortgage.

Judge Bartch will hold a session of the Third district court today for the transaction of such business as may come before him.

In the case of R. C. Reever vs. P. A. Patterson, Justice Hall has rendered judgment in favor of the plaintiff for $139.

George Mullett & Co. are suing Charles Ingalis in Justice Lochrie's court to collect $71.30 alleged to be due for merchandise.

Probate Court Orders.

Judge Blair made the following orders in the probate court yesterday:

Estate of John Lawson, deceased; sale of real estate confirmed.

Estate of William H. Jennings, deceased; June 23 set to hear petition for letters of administration.

A PROVO BUDGET.

Yesterday Was the Date for Enoch Davis' Execution.

Attempt to Burn the Old Methodist Parsonage—Flight of a Kleptomaniac—A Street Railway Franchise.

PROVO, June 9.—Had it not been that Enoch Davis was granted a hearing before the Supreme Court of the United States he would have been taken today into the court house yard and shot. What will be the decision of that court is anxiously looked for by those who are familiar with the case.

Provo baseball team went to Wallsburg today to show those boys how to pound the sheep skin.

THE STREET RAILWAY.

W. P. Bennett has made application for a franchise to operate the Provo street railway during the summer season. The Provo lake resort is soon to be reopened.

A fire broke out last evening at the residence of Mrs. Sarah E. Cluff and badly scorched the dining room. The damage was not great.

A KLEPTOMANIAC'S FLIGHT.

It was told about town this evening that "Wall" Halliday had jumped the town. "Wall" has been caught in several stealing scrapes, and on account of his family connections has been let down and out of them very easily, but there was a great amount of indignation expressed by the public since it was reported that he had touched Pyne & Maibens till for $10, and the sentiment was in favor of his being punished to the full extent of the law. A great amount of trouble has been brought upon County Clerk Halliday and his family through the acts of this young kleptomaniac, who when he worked as a clerk in his father's office at the court house extracted money from the safe. Every effort has been made by the parents for a reformation of their wayward boy, but to no avail.

WORK OF INCENDIARIES.

It looks as though some one had tried to burn up the old Methodist parsonage which is owned by Mrs. George B. Loring. Yesterday morning the fire department was summoned there and saw smoke issuing from the building, which was vacant. A lamp had exploded and a can of coal oil was on the floor partly filled. Who has been monkeying is what the officers would like to find out. There is $800 insurance.

AWAY WITH THEM.

Send the Vile Chinamen Home, Say the Federated Trades.

Resolutions Adopted at Last Night's Meeting—The Attitude of Religious Organizations Denounced.

The Chinese question was made the special order of business at the meeting of the Federated Trades last night, the matter coming up in the following report of the special committee, which was unanimously adopted:

Whereas, The increasing numbers of Chinese in the United States are a menace to the workingmen of the country, and

Whereas, The allegiance the Chinese owe and are unwilling to forego to the Emperor of China really results in the establishment of an empire within our republic, making the Chinese without fear or respect for our laws, local or otherwise, as is shown by their disregard for our customs, laws, sanitary laws and laws for the protection of human life, in their constant evasion of every law and custom tending to the upholding of morality, make them a curse to the country and a retarding force in our civilization and education, and

Whereas, The Chinese are smokers and users of opium, a habit whose introduction by them into this country has left thousands of mental, moral and physical wrecks annually, and spread death and destruction in horrid form among the men and women of our country; and

Whereas, The Chinese are controlled by the Chinese Six Companies and other corporations to such an extent that even the few who desired citizenship were advised by their masters against registering under the Geary law, and nearly all obeyed, and

Whereas, The almost entire absence of Chinese women, and the fact that this country is not considered good enough for the bones of Chinemen to rest in after death, and the manner in which they exist while here, are proofs positive of their intentions towards and their estimation of women and our laws and customs, and

Whereas, We look with horror and distrust upon the many protestations of love for Chinese and opposition to Congressional statutes and the Supreme Court judiciary of the United States by religious organizations throughout the country, who hold the interests of their Chinese missions to be paramont to the momentous future of millions of American workingmen, whose sustenance and the morals of whose children are endangered by these constant absorbants of our money and degraders of our growing population, and

Whereas, The peculiar and disgusting diseases so common among these people through infection of loathesome diseases, and none more obnoxious or dreadful than leprosy, therefore, be it

Resolved, That we, the Federated Trades and Labor Council of Utah, in meeting here assembled, do protest against religious fanaticism as opposed to the laws of the United States; that the Chinese are detrimental to our industries, and that their moral influence is execrable; and that we are heartily in accord with the Geary law, and sincerely hope proper means will be provided and used for the speedy deportation of the Chinese; and that we earnestly entreat all good citizens of all classes to assist in enforcing the law and ridding our country of so pestiferous a portion of our population; and the corporations of power and wealth now seeking to impair the efficacy of our laws by the employment of legal talent of great ability, and their moral support by church organizations we condemn as un-American and not humane or just.

JAMES MCWENIE,
JAMES TERRY,
P. W. MCCAFFREY,
G. B. BENHAM,
HERMAN RAASCH.

☞ In addition to this the following resolution was adopted:

Resolved, That the delegates from all unions affiliated with the Federated Trades notify their organizations that the council desires their assistance, both individually and collectively, to aid in every way in displacing Chinese by white labor, and to refrain from patronizing Chinese or those who employ them in any manner or at any time.

A committee was appointed to wait upon the chamber of commerce in reference to a report that 2,000 men had been advertised for to come to Salt Lake, where they could secure permanent employment.

The arbitration committee reported that the trouble between the Plumbers' union and Henry Wagner had been amicably settled.

A committee was appointed to take up the matter of a Fourth of July celebration and report at the next meeting.

The condition of trades was reported as follows:

Typographical—Fair.
Carpenters—Dull; some men out of work.
Cigar makers—All union men employed.
Blacksmiths—Dull.
Painters—Good.
Cooks, Waiters and Bartenders—Dull.
Bakers—Fair; all men employed but one.
Brewers—Fair.
Machinists—Fair; all union men employed.
Tailors—Good.
Iron Moulders—Fair.
Retail clerks—Dull.
Adjourned for two weeks.