LATTER-DAY SAINTS IN UTAH.

OPINION

OF THE

HON. Z. SNOW,

Judge of the Supreme Court of the United States for the Territory of Utah,

UPON THE OFFICIAL COURSE OF

HIS EXCELLENCY GOV. BRIGHAM YOUNG.

PLEA OF GEORGE A. SMITH, ESQ.,

AND

CHARGE OF THE HON. JUDGE SNOW,

UPON THE

TRIAL OF HOWARD EGAN BEFORE THE UNITED STATES DISTRICT COURT, ON INDICTMENT FOR THE MURDER OF JAMES MONROE.

VERDICT.

A BILL

TO ESTABLISH A

TERRITORIAL GOVERNMENT FOR UTAH.

THE

NAMES OF THE TERRITORIAL OFFICERS,

ETC., ETC.

PRICE THREEPENCE.

LIVERPOOL:
F. D. RICHARDS, 15, WILTON STREET.
LONDON:
T. C. ARMSTRONG, 35, JEWIN STREET, CITY.
AND ALL BOOKSELLERS.

1852.

LIVERPOOL:
PRINTED BY R. JAMES, 39, SOUTH CASTLE STREET.

PREFACE.

The following compilation may be considered a complete refutation of the charges contained in the Report of the returned Judges for Utah, against His Excellency Governor Brigham Young, and the citizens of that Territory.

The very able and lucid Opinion of the Hon. Z. Snow, Judge of the Supreme Court of the United States for the Territory, fully exonerates His Excellency from all the Legal imputations of those delinquent officers, and reflects credit upon himself in evincing his moral courage to take his seat and administer justice, although both his comrades of the Bench had deserted their posts. We trust the Hon. Judge will continue as he has began, to prove himself the undaunted and uncompromising advocate of the Liberty, Constitution, and Laws, which the fathers of that people fought shoulder to shoulder with their compatriots to obtain.

We are honoured by a personal acquaintance with Governor Young, and know him to be ardently attached to the Constitution and Laws of his country; and while he is honoured with the Executive function, we have no doubts of the prosperity of the people over whom he officiates, or of the terror which he will convey to all transgressors of the Law and Constitution, who may reside within the purview of his administration.

For defence against the charges of vice and immorality upon the people of Great Salt Lake City, we offer the plea of George A. Smith, Esq., and the Charge of the Court to the Jury, on the trial of Howard Egan, indicted for the murder of James Monroe.

These legal facts, coming from the highest Judicial authorities of a United States Court, declare unmistakably the high estimate of

the marriage relation entertained by the Latter-day Saints. And if our readers are too prejudiced to discern, or too incredulous to believe, the morality of that people, with such evidence before them,—then we say, fearless of contradiction, such will not believe though one should rise from the dead.

We had thought to give a copy of the "Report" of which so frequent extracts, abstracts, and references are being made in the public prints throughout the country; but we are informed the learned Judges have given the people four different versions; and as we could not do ourselves and the people justice by inserting any one without giving the others, and finding that would quite transcend our limits, we have concluded that as the following pages are so competent an answer to any portion of either, or the entire of each, that we may well be excused from bringing accusations against ourselves, and rest contented, as we ever have, by acting on the defensive.

The Organic Act is also introduced, that all who wish may know the foundation upon which the organization and goverment of the Territory of Utah rests; by reference to which, Judge Snow's Opinion also may be the more justly estimated.

The whole is most respectfully submitted to a discerning public, believing it will prove useful in refutation of the calumniating charges which are so lavishly bestowed upon an injured and unoffending people, as well as enlighten those who, perhaps, for the first time, are now led to inquire what these things mean.

FRANKLIN D. RICHARDS.

15, *Wilton Street, Liverpool,*
March 12, 1852.

LATTER-DAY SAINTS IN UTAH.

(*From the "Deseret News" of Nov. 29th*, 1851.)

CORRESPONDENCE.

Great Salt Lake City, Oct. 15, 1851.

Sir,—Having heard a portion of your decision from the bench, in relation to the Legislature of the Territory, and believing it would be read with interest by many, I respectfully solicit a copy for the press.

Most respectfully,
Your servant,
W. RICHARDS.

Hon. Z. Snow, Associate Justice, Utah.

Great Salt Lake City, Oct. 20, 1851.

Dear Sir,—Your letter of the 15th instant, requesting for the press, a copy of my legal opinion delivered on taking my seat as a Justice of the United States Court for this Territory, relating to the legality of the proceedings of his Excellency Governor Young, in getting up and calling together the Legislative Assembly of Utah, came duly to hand.

In sending you the copy, I deem it a duty I owe to myself, to remind you, that the Act of the Assembly requiring me to hold a court the first Monday of this month, was approved on the 4th. This allowed me but a few days to examine the facts and law of the matter.

These facts would not have been examined by me, nor any opinion given, had not, prior to that time, the other two Justices and the Secretary of the Territory, left for the States, throwing out hints and opinions quite different from my own. This being the case, I felt it a duty to examine the facts and express the Opinion. Doing so, it became public property, which authorizes you to use it as you think best.

Very respectfully, your obedient servant,
Z. SNOW.

Hon. Willard Richards, Great Salt Lake City, Utah.

OPINION.

Two Justices of the Supreme Court of the United States within and for the Territory of Utah, and the Secretary of the Territory, having left for the States, it becomes me to examine carefully the acts and doings of the Governor in relation to the getting up of the real or supposed Legislative Assembly which passed the act approved Oct. 4. 1851, requiring me to hold a court on the first Monday of October, 1851, before I attempt to discharge the duties required by that act.

Courts, *ex officio*, take notice of all public laws and public documents issued by the chief magistrates, pursuant to law It is therefore my duty to take notice of so many of the acts and doings of the Governor as relate to getting up and calling together the Legislative Assembly. If these proceedings are authorized by law, then they are not void, but legal; if they are not authorized by law, then they are not legal, but

void; and the acts passed by the Legislative Assembly are also void. If these proceedings are erroneous merely, then the acts passed by that body are legal, and the errors, if any, must be corrected by that branch of the Government whose right it is to correct them. If they are not erroneous, then my duty is clear.

To come to a correct conclusion on this subject, it will be convenient, if not necessary, to refer to some parts of the history of the Territory.

On the 24th of July, 1847, when this entire basin was Mexican domain, subject to the military rule of the United States, which had, by conquest, been established, a few American citizens came here and established a settlement. How far this military rule effected this settlement, I have not seen fit to inquire; but it is presumed it did not seriously, as the American army was stationed some several hundred miles distant.

This settlement continued to prosper until February 2nd, 1848, when this military rule, such as it was, was terminated by the Treaty of Guadalope Hidalgo; in which the entire basin was ceded to the United States. It is a rule of international law, that when one government cedes territory to another, the laws in force in the ceded country, continue to be in force until changed by the new government.

By this rule, if there were any laws of the Mexican States in force here on the 2nd of February, 1848, they would continue in force until changed. Were there any laws of the Mexican States in force here? This question is more easily asked than answered. I am ignorant of any. When we consider that this vast country, lying between the Missouri river and the eastern boundary of California and Oregon extending north and south indefinitely, has, until quite recently, been thought to be a vast desert, unfit to sustain civilized man; and when we consider, that this settlement is now near or quite eight hundred miles from any other civilized settlement, and that this whole region, until quite recently, has been inhabited by savages, with here and there a trader and trapper, it may not be far from the truth to conclude, that there was no law of a Mexican State in force here at the signing of the Treaty of Guadalope Hidalgo.

By this Treaty, the Mexican government yielded to the United States whatever supervisory right it had over the Indians and country; and the United States obtained the right of soil subject to the Indian title; also the *right* to exercise its supervisory control over the Indians and other inhabitants; and the "*right to make all needful rules and regulations respecting*" this part of its domain; but by it, the Constitution and laws of the United States were not extended over this Territory. The right to extend or make a law, is one thing; and the extending or making the law, is another.

The conclusion to which I have arrived is, that during the period between February 2nd, 1848, and perhaps before that time, and September 9, 1850, there was no civil law in force here, except such as had been enacted by the inhabitants of this valley, and such limited supervisory rules of Congress as it had made in regard to the census and protecting its officers.

Every act of man is lawful which is not against public policy, nor against any existing law, nor against individual rights. All just civil powers emanate from the people. Every aggregate body of men dwelling where there is no civil law in force, may make such laws as, in their opinion, will secure to them their lives, liberty and happiness. Having a right to form a civil government subject to the right of Congress "to make all needful rules and regulations respecting" this part of its public domain, and to its national control, and being desirous of establishing a law suited to their own wants—the people of this Valley in 1849 formed a constitution, as the basis of their civil institutions, providing for an executive, a legislative, and judiciary. This being done, they sent a delegate to Congress, asking admission, as a State, into the Union. Pursuant to this constitution, the Legislature convened and passed sundry laws, among which was one relating to the Judiciary, and another regulating elections.

Both of these acts were in force here on the 9th day of September, 1850, the day the act of Congress took effect, establishing a Territorial Government for Utah.

By the 17th section of the act of Congress the constitution and laws of the United States were extended over this basin, which superseded the provisional laws, so far as their provisions were inconsistent with the constitution and laws of the United States. The provisional constitution and laws gave place to this act, and the constitution and

laws of the United States. This act also provided for an Executive, Legislative, and Judiciary. In the 11th section, it is provided, that the President shall appoint, &c., certain of its officers, among which are the Governor, the Justices, the Secretary, Marshall, and District Attorney.

It also named the officers before whom the Governor and other officers appointed by the President might take the oath of office, among whom we find "the District Judge or some Justice of the Peace in the limits of said Territory duly authorized to administer oaths and affirmations by the laws then (September 9, 1850) in force therein."

This, to a limited extent, recognized the legal force of the provisional laws.

To organize under this act, two things were necessary. First, the appointment of the officers by the President; second, the oath of office to be taken by the appointees.

September 28, 1850, the officers were appointed by the President Any one of whom, might, the next day, had he been in a condition so to do, have taken the oath of office and entered on his duties.

February 3, 1851, the Governor took his oath of office. At any time after this, whether the other officers were in the line of duty or not, he could do any act required of him, which did not require the co-operation of the other officers. The Governor, for many good reasons, was charged with the duty of getting up and calling together the Legislative Assembly. The 4th and 12th sections show what his duties were in this matter. They were, first, to take the census or enumeration of the inhabitants of the Territory, previous to the first election. Second, to make an apportionment of the Council and Representatives among the several counties or districts "as nearly equal as practicable, giving to each section representation in the ratio of its population as nearly equal as may be." Third, to declare the number of Councillors and Representatives each district or county was entitled to send. Fourth, to fix the time of election. Fifth, to fix the places of election. Sixth, to declare the manner of conducting the election. Seventh, to determine who had been elected. Eighth, to fix the time of the first meeting of the Legislative Assembly. Ninth, to fix the place of its first meeting.

Under certain contingencies which have not in this case happened, he had other duties to perform; but as they have not occurred, these duties are not mentioned.

I will here remark, that though in all these cases, he was to perform the duties, yet in each one he had a discretionary power given him When an officer of the government, whether he be a high or a low one, has a discretionary power given him in the discharge of any duty, no other officer or branch of government has power to control him in the exercise of that discretion.

Inasmuch as exceptions have been taken to the proceedings of the Governor relating to the census, I will here refer to the manner in which that duty was discharged.

By the 1st section of the act of Congress, approved May 23, 1850, relating to taking the census of the United States, it is provided that "if there be any district or territory of the United States in which there is no Marshal of the United States, the President shall appoint some suitable person to discharge the duties assigned by this act to the Marshals." The duties of the Marshals were in substance to take the census. By the 8th section of the same act the Secretary of the Interior was charged with the duty of seeing that the several Marshals discharged their duties faithfully. In fact, he was the officer, under the President, to see the act in all its parts, duly executed; and of course to appoint some suitable person to take the census here, as this was a section of country of the United States in which there was no Marshal. This act required the several Marshals to have their duties fully performed on or before the 1st day of November then next ensuing. It was however soon ascertained, that the Marshals could not perform their duties under this law, within the time therein limited. Congress therefore by an act approved August 30, 1850, ten days before there was any Territory of Utah, extended the time for taking the census therein It is to be remembered, that these three acts were passed at one session of Congress, and therefore they are to be construed so as to carry into effect their objects without requiring a work of supererogation. The object of the first two acts was to take the census throughout the United States. The object of taking the

census as provided in the Utah Bill, was to inform the Governor of the number of inhabitants, Indians excepted, in the several counties and Districts, so as to enable him to fix the ratio of representation among the several counties, &c., giving to each, as nearly as may be, equal representation in the Legislative Assembly at its first session. Any official information of the number of inhabitants in each county or district, answered the spirit of the act. If he, after taking the oath of office, and before making the apportionment, took the census in person or caused it to be done, he fulfilled the letter of the law. He who does a thing, causes it to be done; and he who causes a thing to be done, may be said to do the thing. Now the President, by the Secretary of the Interior, pursuant to the provisions of the law approved May 23, 1850, appointed Governor Young a special agent to take the census of Utah; the duties of which he performed, after he had taken the oath of office as Governor and previous to making the apportionment of the Council and Representatives among the several counties and districts.

On March 28, 1851, Governor Young as such authorized Thomas Bullock to take the census, pursuant to the bill creating the Territory of Utah; which duties were also performed before the appointment was made, as appears by the papers on file in the Governor's office.

So Governor Young did take the census, both as Governor and as a special agent appointed pursuant to the law of Congress. I conclude therefore, that in this respect he fulfilled both the spirit and letter of the act. Had he not taken the census as prescribed in the act, nor in any other manner, I should not be prepared to hold the election void for that defect; though he would not have discharged his duties in this particular.

He was to make an apportionment of the Council and Representative among the several counties and districts, also to fix the time and places of election, declare the number each county and district would be entitled to send, and direct the manner of conducting the election.

A little reflection will soon convince us, that in all these duties, there was a large discretionary power given him. As to the time of election, he might name what day he pleased, but he could only fix one day for the election, and that was to be the same throughout the Territory; so the time was submitted to his discretion.

The number of places for the election, and where these places should be, was also submitted to his discretion.

The number of Council and Representatives for each county and district, was also submitted to his discretion.

The number of Council and Representative districts was likewise submitted to his discretion; provided he did not make more than thirteen for Council, nor twenty-six for Representatives

The same holds true in regard to the manner of conducting the election. He might legally set forth entire new rules for that purpose, or he might avail himself of such rules as were familiar to the inhabitants. Again, he had the choice of means. He might select any rule to accomplish these things, known to civilized life, keeping within their customs and usuages.

I will now see what means he did use, and how he discharged these duties. July 1, 1851, he issued a Proclamation under his hand officially, though not under the seal of the Territory, in which he made an apportionment of representation among the several counties, &c.; stated the number each was to send, and fixed the time of election; but he did not in the body of it fix the places of election nor state in what manner it should be conducted, though he used the following language on this part of the subject, after stating that he had fixed an apportionment, &c.: "and direct that an election be held in the respective precincts throughout the Territory on the first Monday in August next, in accordance with the existing laws of the provisional government of the State of Deseret regulating elections, passed by the General Assembly Nov. 12, 1849, page 9." It is contended that this is void for two reasons; if so, then there has not been an election, and consequently there has not any Legislative Assembly met.

One reason assigned for its being void is, it had not the seal of the Territory affixed thereto.

The act creating the Territory, does not state how the Governor should discharge these duties, nor how he should execute such an instrument; therefore it does not in terms require it to be authenticated by the seal of the Territory. It is however a time-honored custom to authenticate such an instrument with the impress of the Great Seal. When this is done, it is *conclusive evidence* that the instrument if authorized by law, is genuine; it is placed there as an evidence of its genuineness. An instrument may be authorized by law and be genuine, and yet not bear upon its face *conclusive evidence* of its genuineness.

It is the constant practice of the Governors of the States and of the President of the United States, so far as their acts have come under my notice, to do official business both with and without authenticating their acts with the impress of the Great Seal. But all public documents and other instruments which the law requires to be under seal, must be sealed or they are void; they not being complete without a seal. If the law does not require an instrument or public document to be under seal, then the super-addition of a seal does not give it any additional validity.

I conclude, inasmuch as the Governor had the choice of means and discretionary power as to the manner of discharging these duties, and the act did not require him to authenticate his proceedings with the impress of the seal, the Proclamation is not void for the want of the seal. As a matter of fact within my knowledge, there was no seal of the Territory within its limits, when that document was issued.

Another reason alleged for its being void, is, that in the body of this proclamation, he did not fix the places of election, nor state the manner of conducting it, that the Deseret law was superseded by the act of Congress creating this Territory, and therefore the election could not be held according to its provisions

Now I do not so understand the law, or perhaps I should say, if such be the law, it does not follow, that the Proclamation and Election are void. True, if there be no place or places for the voters to assemble and cast their ballots, all would be confusion; and for that reason, the election *might* be void. True, if there be no manner of conducting the election, all would be confusion and irregularity; and for that reason the election *might* be void. True, the Act of Congress creating the Territory and extending the constitution and laws of the United States over it, did supersede the provisional laws so far as their provisions were inconsistent with each other. True, the election law of Deseret did not provide for the election of a Delegate to Congress, nor for the election of the members of the Legislative Assembly of the Territory of Utah; but only for the election of the State, County and Precinct officers of Deseret, and the members of its Legislature.

But, though all this be true, and though the act of Congress had superseded every provision of the Deseret Laws, and entirely disannulled every one of them, still it does not follow that the election is void, for the reason that the *Act of Congress gave full power to the Governor to fix the places of election, and direct the manner of conducting it.* If he *fixed the places* of election, he did it, not by virtue of the Deseret laws, but by virtue of the law of Congress. If he *directed the manner of conducting* the election, he did it, not by virtue of the Deseret law, but by virtue of the law of the United States.

He had a right to name the places of election, and state fully who should be the judges and clerk at each place, how they should discharge their duties and make return to him; or he had a right to avail himself of the places fixed by the Deseret law, and of the judges and clerks of the election established according to its provisions, and direct the elections to be *conducted in the same manner* that their own act had provided. Now the view I take of this matter, is this: the Governor, by directing the election to be held according to the Deseret act referring to it, did the same in contemplation of law as if he had said to the electors, meet on the day named, that is, on the first Monday in August, at the places provided by the Act referred to, or at your usual places of holding elections in each precinct, and there elect the members, &c. Let the judges and clerks of the usual elections be judges and clerks of this election. Let them certify the result in the usual manner; or what is the same thing, in the manner specified in the Deseret law. Let the sheriffs, clerks of courts, justices of the peace, each in their turn, do their duties in this election the same as in other elections. In so doing he did the same as any or all the Governors of States do,

when they issue writs of, or proclamations for elections: Provided, the Deseret law is sufficiently certain as to the places of holding and manner of conducting the elections. And yet the election when so held, would not be held by virtue of the Deseret act, but by the law of Congress creating the Territory. For it was by the law of Congress that the Governor was authorized to do that business.

This leads us to examine the Deseret laws, to see whether or not they have provided for the places of elections and the manner of conducting them. On looking into these acts I find many provisions which have no bearing on this subject; I shall, therefore, confine myself mainly to such as have a bearing on these questions. In them I find a Legislative, a Judiciary, and an Executive department. I find an act to establish a judiciary, and another to regulate elections. I find counties laid off and divided into precincts; cities incorporated; and roads laid off, &c., &c. In all these things, the acts are not essentially different from the like proceedings in the States.

The election law provides for the election of most of the State and County officers; by it each precinct is an election district. The Judges of the County Courts are at its March term to name a house or place in each precinct at which the election shall be held; also to appoint two Judges and one Clerk of elections in each precinct. These Judges and Clerks are to take an oath to discharge their duties faithfully. The law also provides that the electors in any precinct not provided for may meet and conduct their election in their own way. Sheriffs, Clerks of Courts, and Justices of the Peace. each have their duties to perform in preparing and circulating poll books and counting the returns in the county, certifying the result of the votes in the county to the secretary of State, which were to be counted in the presence of the Governor, &c. The election was to be by ballot. Now as to the manner of conducting the elections under this law, I have not found any serious objections; the only thing apparently wrong is that it does not fix the places of elections, though it provides a method by which the places are to be fixed. Now if the Judges of the County Courts did their duties at the March term, and it is a presumption of law that they did until the contrary appears, then the places of holding the election were fixed by them. Giving to these courts the benefit of the legal presumption the same as to all other like Courts, that they discharge their duties unless the contrary be shown; we find no illegality or uncertainty in the places of holding the elections. It does not appear that they did not do their duties; so, legally, I must presume that they did. Besides, I have been informed by some of these judges their duties in this respect were performed.

I therefore conclude the proclamation was not void for uncertainty in not more minutely fixing the places of elections, nor for directing it to be held according to the Deseret election law.

It has been alleged, that aliens voted at the election, and were Clerks and Judges of the same; and for this reason it was void.

Now, whether aliens voted or not, I do not know; nor have I any official information whether any or all the clerks or judges of the election were aliens. These are questions of fact which require proof to be made to the proper branch of the Government, so that the error, if any may be corrected. But suppose it be true that aliens voted, does this render the election void? The answer is it may and it may not. It is to be remembered that in this election there were not any opposing candidates in any of the districts; therefore if one legal vote was given for each member, though all others were illegal, the member would be legally elected.

Suppose some of the Clerks and Judges of the election were aliens. Does this render the election void? It appears to me rather strong doctrine to hold, that a people or body of legal voters are to lose their voice in the Legislative Assembly for the reason that some of the Judges or Clerks were not competent to hold office. I do not think it necessary to decide whether or not a Judge or a Clerk of one election only, is an officer within the meaning of the 5th section of the act creating the Territory of Utah. If any member was illegally returned, or was not competent to fill the station, the branch of the Legislative Assembly to which such member was elected, had full power to hear the matter, determine the facts, and refuse him a seat.

In so doing, any errors in the voters, or Judges, or Clerks of elections, would be examined; and if they were such as render the election of any member illegal, he ought not, and, as I presume, would not be permitted a seat. As a matter of fact it is

known to me that one member was elected to the House of Representatives, who was in this manner refused a seat.

It was also contended, that inasmuch as this proclamation did not prescribe the qualifications of electors, nor the persons entitled to be elected, it was for this reason void.

Now I do not so understand the law. The Act creating the Government of Utah did not require the Governor to set forth either of these things. It defined both. Both are made clear by the law which every one is presumed to know: and, for this reason it was not necessary to set them forth in the proclamation.

It is also contended that officers not authorized by the act, to be elected, were voted for and elected; and for this reason the election was void.

I believe these facts are true, but the legal conclusion drawn from them, I think, is erroneous. It appears to me that voting for and electing a class of officers which the Governor was authorized to appoint, was at most only surplusage, which does not vitiate. Besides, the Deseret law required them to be elected, which probably was the reason of the mistake. The act further required the Governor to declare who had been elected; also to fix the time and place of the first meeting of the Legislative Assembly. It is contended this duty has not been discharged; if this be correct, then no Legislative Assembly has been legally called together.

I will examine and see what the facts are in regard to this. A short time before the meeting of the Legislative Assembly, the Governor issued a proclamation bearing date on the 18th day of September, 1851, in which he named the persons who, he therein declared, had been elected, and fixed the time of meeting on the 22d of the same month at the Council House in Great Salt Lake City. This proclamation was printed and circulated, but how extensive its circulation I know not, neither do I think it material to inquire.

This, it has been and still is urged, is fatally different from any proclamation on file in the office of the Secretary.

The Secretary having left for the States, and having taken with him the funds of the Government, and having left his papers where they are not within my reach, I have no means of knowing wherein this differs, if it differs at all, from the one on file in his office, if he has one, except what may be inferred from a letter written by him to the Hon. Willard Richards and W. W. Phelps, bearing date on the 25th of September, 1851. From this I infer that on the 19th of September, the day after the date of the proclamation, it was taken to the Secretary, to be by him sealed with the seal of the Territory, to which he affixed the seal.

The printed one has no place of the seal. If this inference be correct, then the proclamation had the seal of the Territory; but the one printed did not show that fact, though it did show on its face, that the Secretary attested it. If it had the seal of the Territory, it was good; if it had not the seal, it was also good; as the Governors of States and Territories, and the President of the United States, are in the constant habit of doing business officially both with and without attesting the same with the Great Seal.

In 1850-51 President Fillmore issued three proclamations, one without, and two with, the attestation of the Great Seal. See Statutes at Large, Second Session, Thirty-first Congress, Appendix No. I, II, and III.

In 1847 President Polk issued two proclamations, both without the attestation of the Great Seal. See Statutes at Large, First Session, Thirtieth Congress, Appendix No. I and II.

I have examined the proclamations of the Presidents for more than thirty years past, and find more issued without being authenticated by the Great Seal, than with. See Appendices to Little and Brown's Statutes at Large.

In getting up and calling together the Legislative Assembly, the Secretary had nothing to do, except the recording of the proceedings of the Governor. This duty the Governor had to perform. In doing which the Secretary had no right to interfere any more than any private citizen. The officers of Governor and Secretary are separate and distinct; and each incumbent can do lawful acts without the concurrence of the other. The legality of the Governor's proceedings does not depend on the consent of the Secretary, nor on the fact whether he discharges his duty or not. If therefore this proclamation was legal when issued, and I think it was, the subsequent addi-

tion of the seal of the Territory by the Secretary did it neither good nor harm. If it was legal when issued, it continued to be legal whether it was recorded or not; the recording of it not being necessary to its validity, but being done to preserve the evidence of the fact.

Another objection to this proclamation is, that it was not reasonable as to time.

The law required the Governor to fix the time and place of the first meeting of the Assembly, but the time and place, also the manner in which notice was to be given to the members, and the length of time which should elapse between the notice and meeting, were all submitted to his discretion.

The Governor on the 27th of September, 1851, after the Secretary had concluded to leave, addressed a line to the Judges of the Supreme Court of this Territory, respecting his duties and the duties of Mr. Harris.—All the Judges answered this letter, and used, among other things the following langnage,—

"When an officer is invested with a discretionary power, or to exercise his judgment in the performance of a duty, there is no power to compel him to obey any mandate interfering with that discretion" With this I am quite satisfied, and think it applies to the Governor as well as the Secretary.

I have now examined every objection urged against the proceedings of the Governor in relation to the getting up and calling together the Assembly, and find his proceedings to be strictly legal. Finding them legal, I believe it the right of the President, the right of the United States, and the inhabitants of this Territory to have me take my seat and hold my first Court as required by the act of the Legislative Assembly of Utah; and believing so, I do not hesitate to enter on my duties.

Z. Snow.

(From the "Deseret News" of Nov, 15th, 1851.)

INDICTMENT FOR MURDER.

October Term, 1851.

Before the Hon. Z. Snow, Judge of the First Judicial District Court of the United States for the Territory of Utah.

United States *versus* Howard Egan.

Seth M. Blair, Esq., U. S. Prosecuting Attorney.

George A. Smith, Esq., W. W. Phelps, Esq., } Counsel for Prisoner.

This case was brought before said Court by Presentment, &c.

The Prosecution was very spirited, and no duty left unperformed by Mr. Blair.

PLEA OF GEORGE A. SMITH, ESQ.

Please the Court, and Gentlemen of the Jury: With the blessing of the Almighty, although not in a proper state of health, I feel disposed to offer a few reasons, and to present a few arguments, and perhaps a few authorities, upon the point in question. In the first place, I will say, gentlemen of the Jury, you will have to bear with me in my manner of communication, being but a new member of the bar, and unaccustomed to addressing a Jury. The case upon which I am called to address you is one of no small moment. It is one which presents before you, and to investigate which, involves the life of a fellow-citizen.

I am not prepared to refer to authorities on legal points, as I would have been had not the trial been so hasty; but as it is, I shall present my arguments upon a plain, simple principle of reasoning. Not being acquainted with the dead languages, I shall simply talk the common mountain English, without reference to anything that may be technical. All I want is simple truth and justice. This defendant asks not his life, if he deserves to die; but if he has done nothing but an act of justice, he wishes that justice awarded to him.

It is highly probable that the manner in which I may present my arguments, may be exceptionable to the learned, or to the technical policy of modern times; be that as it may, the plain simple truth is what I am aiming at.

I am happy to behold an intelligent Jury, who are looking for justice instead of some dark, sly, or technical course by which to bias their judgment. I shall refer in the first instance to an item of law, which was quoted by the learned prosecutor yesterday, in which he stated to this jury, that the person killed should be, or must be, a reasonable creature. Now what dark meaning, what unknown interpretation the learned and deep-read men of law may give by which to interpret this language, it is impossible for me to say; as I said before, it is the plain mountain English I profess to talk. It was admitted on the part of the prosecution, that James Monroe, who is alleged in this indictment to have been killed by Howard Egan, had seduced Egan's wife; that he had come into this place in the absence of her husband, and had seduced his family, in consequence of which, an illegitimate child has been brought into the world; and the disgrace which must arise from such a transaction in his family, had fallen on

the head of the defendant. This was admitted by the prosecution. Now, gentlemen of the jury, according to plain mountain English, a *reasonable creature* will not commit such an outrage upon his fellow man; that is the plain, positive truth, as we understand things.

But, perhaps, this defendant is to be tried by the laws of England, and perhaps in England they have a different understanding of the passage. Suppose I admit it for argument's sake. It was a point repeatedly argued and decided by Chancellor Kent, that every honest man was a lawyer and that the intent of the law was to do justice. The Statute or Organic Law of Utah, which extends the laws of the United States, and secondly, in a degree, the laws of England, over this country, makes a reservation in the matter, which reservation I wish you to consider favourably, for the benefit of my client.—"The laws of the United States are hereby extended, and decreed to be in force for said territory, *so far as the same or any provision thereof may be applicable.*" Now we do not consider the wise legislators extended these laws over this territory, only that they should be extended where they should be applicable; they no doubt supposed they might not be applicable in certain cases, and therefore wisely inserted that clause. Then, if a law is to be in force upon us, it must be plain and simple to the understanding, and be applicable to our situation.

I will quote history instead of law. I will go back to the time when Rome was a young and flourishing State; when in the midst of prosperity they thought proper to procure a code of laws; and being wilderness men they sent to the wise and learned Greeks for a code of laws. The wisest lawyers of Greece were selected, who formed first a code written upon ten tables, and finally added two others, which were received by the Roman Senate. Now I wish you to understand me as bringing this up by way of illustration, knowing that these men before me are sworn to execute justice, and if I can illustrate this to their understanding, one point is gained, so far as it has a bearing upon this case.

The laws of the twelve tables were formed for a people possessing the Greek refinements and Greek ideas; Greek notions of right and wrong; these laws were made according to a genius of liberty known among that ripened confederacy. They are brought to Rome: to a people entirely different in their genius, who placed different values upon different points, and had different views of right and wrong: they had to put them in force: and, let me ask you, what was the result? Read the pages of history, and hundreds of mourning families will tell the sad tale! The truth is written with the blood of thousands, through taking the rules, laws, and regulations of an old and rotten confederacy, and applying them to a new and flourishing territory! I argue, then, that these laws, which may have force in old England, are totally inapplicable to plain mountain men.

I want to inquire whether the genius, and the spirit, and the actual existing principle of justice and right, which abide in the inhabitants of these mountains, is the same as that found among the nations of the old world? And whether such an application of law and justice as that I have just noticed is applicable to us?

In England, when a man seduces the wife or relative of another, he enters a civil suit for damages, which may perhaps cost him five hundred pounds, to get his case through; and, as a matter of course, if he unfortunately belongs to the toiling million, he may get twenty pounds as damages. In this case, character is not estimated, neither reputation, but the number of pounds, shillings, and pence alone bear the sway, which is common in courts of all old and rotten governments.

In taking this point into consideration, I argue that in this territory it is a principle of mountain common law, that no man can seduce the wife of another *without endangering his own life.* I may be asked for books. Common law is, in reality, unwritten law; and all the common law that has been written is the decision of courts; and every time some new decision comes up, it is written, which you may find stacked up in the Attorney-General's office, in Great Britain. This is continuing: fresh decisions are still being made, and new written authorities added; and precedent upon precedent established in the courts of the United States and Great Britain; and must we be judged by these ten thousand books?

What is natural justice with this people? Does a civil suit for damages answer the purpose, not with an isolated individual, but with this whole community? No! it

does not!! The principle, the only one, that beats and throbs through the heart of the entire inhabitants of this Territory, is simply this: *The man who seduces his neighbour's wife must die, and her nearest relative must kill him!*

Call up the testimony of the witness, Mr. Horner, and what does he say? After Mr. Egan killed Monroe, he was the first one to meet him. Egan said, "Do you know the cause?" Mr. Horner had been made acquainted with it: he said he advised Monroe, and told him for God's sake to leave the train, for he did not wish to see him killed in his train. Mr. Horner knew the common law of this Territory: he was acquainted with the genius and spirit of this people: he knew that Monroe's life was forfeited, and the executor was after him, or he (the executor) was damned in the eyes of this people for ever. "*Do leave the train*," says Horner; "I would not have you travel in it for a thousand dollars."—was Monroe a *reasonable creature?* A *dog* that steals a bone will hide away; but will a man be called a *reasonable creature*, when he knows the executioner is on his track, and at the same time walk right over the law; crawl between the sheets of a fellow-citizen, and there lay his crocodile eggs, and then think to stow away gunpowder in a glowing furnace? If we are called upon here to say whether a *reasonable creature* has been killed, a negative reply is certain.

Not Mr. Horner only, who has testified that he knew the cause of the deed, but a number of others. When the news reached Iron County, that Egan's wife had been seduced by Monroe, the universal conclusion was, "there has to be another execution;" and if Howard Egan had not killed that man, he would have been damned by the community for ever, and could not have lived peaceably, without the frown of every man. Now we see that the laws of England only require a civil suit for damages, in a case of seduction; but are these laws to be applied to us who inhabit these mountain heights? The idea is preposterous. You might as well think of applying to us the law of England which pertains to the sovereign lady, the Queen, alone. I will apply it, and with much better sense: "To seduce the sovereign lady, the Queen, is death by the law." I will say, here, in our own Territory, we are the sovereign people, and to seduce the wife of a citizen is death by the common law.

There is no doubt but this case may be questioned, but there is an American common law, as well as an English common law. Had I the books before me, which are at hand in the public library, I might show you parallel instances in the United States, where persons standing in a like position to this defendant have been cleared. I will refer to the case of "New Jersey *v.* Mercer," for killing Hibberton, the seducer of his sister. The circumstance took place upon a public ferry-boat, where Hibberton was shot in a close carriage, in the most public manner. After repeated jury sittings upon his case, the decision was NOT GUILTY. We will allow this to be set down as a precedent, and, if you please, call it American common law. I will refer to another case: that of "Louisiana *v.* Horton," for the killing of the seducer of his sister.—The jury in this case also found the prisoner NOT GUILTY. This is the common practice in the United States, that a man who kills the seducer of his relative is set free.

A case of this kind came under my own observation in Kentucky. A man, for taking the life of the seducer of his sister, was tried and acquitted, although he did the deed in the presence of hundreds of persons: he shot him not more than ten feet from the Court House. I saw the prosecutor, and conversed with him, and have a knowledge of the leading facts. I bring these instances before the jury, to show that there are parallel cases to the one before us in American jurisprudence; and yet, in some of the States a civil suit for damages *will answer the purpose.*

Walker, on this subject, for instance, in the State of Ohio, tells us in cases of this kind a civil suit may be instituted, and a fine be imposed; the civil suit may bring damages according to the character of the person, and that is considered an equivalent for the crime. What is the reason that these civil suits are tried in this way? It is because the spirit which actually reigns in these rotten and overgrown countries is to prostitute female virtue.

Go to the cities of Great Britain, where the census reports between two and three hundred thousand prostitutes: if a man seduces a female, no matter how it occurs, a few pence is all the scoundrel pays. He *damns* the *woman*, who is *consigned to in-*

famy, and compelled to linger out a short existence, and ultimately covers her shame, seeking repose in a premature grave; and this is the spirit and genius, not only of the people of Great Britian, but of some of the States also. How is it here in these mountains, where the genius, spirit, and regulations of society are different from those old nations? Why, men are under the necessity of respecting female chastity, when a seducer is no more secure abroad than the dog is that is found killing sheep,—Female virtue is not protected by those old governments; but they are corrupt institutions, which prostitute and destroy the female character and race.

Just consider this matter. Is the law, the genius, the spirit, and the institutions of a people who go in for preserving inviolate—in perfect innocence, the chastity of the entire female sex,—is it to compare with the spirit and genius of communities that only valne it by a *few dimes? Is that law to be executed on us?* I say that the Congress of the United States have wisely provided that the laws of the United States shall not extend over us any further than they are applicable.

The Jury will please to excuse my manner of treating this matter: I am but a young lawyer—this is my first case, and the first time I ever undertook to talk to a Jury in a court of justice. I say, in my own manner of talking upon the point before you, a fellow-citizen, known among us for years, is tried for his life; and for what? For the *justified killing of a hyena*, that entered his sheets, seduced his wife, and introduced a monster into his family! and to be tried, too, by the laws of a government ten thousand miles from here!

If Howard Egan did kill James Monroe, it was in accordance with the established principles of justice known in these mountains. That the people of this Territory would have regarded him as accessory to the crimes of that creature, had he not done it, is also a plain case. Every man knew the style of old Israel, that the nearest relation would be at his heels to fulfil the requirements of justice.

Now I wish you, gentlemen of the Jury, to consider that the United States have not got the jurisdiction to hang that man for this offence: the laws are not applicable to it; they have ceded away the power to do that thing; it belongs to the people of this Territory; and, as a matter of course, we deny the right of this court to hang this defendant, on principles that have been ceded away to somebody else to act upon.

For instance, the learned attorney for the prosecution read a certain item in the law of the United States yesterday to the Jury, that they might know how to act. Now this is presented to us as a case of exclusive jurisdiction, and as a matter of course, no common law must be brought in, but we are called upon to hang a man according to the customs of a nation ten thousand miles from here, whose principles, organization, spirit, ideas of right and wrong, of crime and justice, are quite different from those which prevail in this young and flourishing Territory. To enforce these laws would be highly pernicious to our prosperity as a people, and as a nation. Therefore, Congress has wisely provided that the people of this Territory should not be thus imposed upon; for instance, as long ago as Sep. 9, 1850, they passed an act providing for the organization of a judiciary, that an original jurisdiction should be acknowledged, *as far as the same be applicable to us*, AND NO FURTHER. This act of killing has been committed within the Territory of Utah, and is not therefore under the exclusive jurisdiction of the United States.

I have been admitted to speak before this intelligent court, for which I feel grateful; and I come before you, not for the pence of that gentleman, the defendant, but to plead for the honour and rights of this whole people, and the defendant in particular: and gentlemen of the Jury, with the limited knowledge I have of law, were I a juryman, I would lay in the jury-room until the worms should draw me through the key-hole, before I would give in my verdict to hang a man for doing an act of justice, for the *neglect* of which he would have been *damned* in the eyes of this whole community.

I make this appeal to you, that you may give unto us a righteous verdict, which will acquit Mr. Egan, that it may be known, that the man who shall insinuate himself into the community, and seduce his neighbour's wife, or seduce or prostitute any female, he may expect to find no more protection than the wolf would find, or the dog that the shepherd finds killing the sheep: that he may be made aware that he cannot escape for a moment.

God said to Cain, I will put a mark upon you, that no man may kill you. I want the crocodile, the hyena, that would destroy the reputation of our females to *feel that the mark is upon him;* and the *avenger upon his path, ready to pounce upon him at any moment to take vengeance;* and this, that the chastity of our women, our wives and daughters, may be preserved; that the community may rest in peace, and no more be annoyed by such vile depredations.

Should the jury feel it their duty to return a verdict in favor of the defence, you are aware that you are borne out in this by the precedents already set up by the Courts of the United States in the few instances I have noticed; that the jurisdiction of the United States extending to this case, does not exist; that the laws of the United States do not apply to it at all: and as men who look for justice, as intelligent lawyers, knowing what is right and wrong, must know, that a verdict, such as the defendant desires, will alone bear justly on the case.

I feel very thankful to the honourable court, and to the jury, as also to the spectators, for the audience given me; and, as I said in the commencement, my health not being good, I was unable to take hold of this business so as to treat it in a manner to satisfy myself, and do justice to the case of my client; and I would say further, what I have said has been in my own mountain English; what the learned prosecutor may be able to show I cannot tell; enough has been said to show you that this defendant has a right, upon just and pure principles, to be acquitted.

JUDGE SNOW'S CHARGE TO THE JURY.

Gentlemen of the Jury.—The grand jury, called and sworn on behalf of the United States, having presented an indictment against Howard Egan for the murder of James Monroe—it becomes our duty to proceed with the case, and if he should be convicted or found guilty of violating the laws of the United States in this behalf, to pass sentence against him. For the purpose of determining the facts, you have been empannelled and sworn to give a true verdict according to the evidence which should be given you in court. You will readily see that your duty is important. It is the right of the United States—the right of the citizens of this territory, and the right of the defendant to insist that you shall now discharge that duty without fear, affection, or partiality. It is the right of us all to insist that, when a crime has been committed, the offender shall be punished by due course of law, but not otherwise. We have no right to punish a person for a real or imaginary wrong, except with the authority of law. The safety of ourselves individually, and of society, depends on the correct and faithful administration of good and wholesome laws. No one ought to be punished unless he be guilty of an act worthy of punishment, not even then, unless that act has been declared to be penal by the law of the land, and the punishment directed, nor until he has had an opportunity of having a fair and impartial trial, for peradventure, he may not be guilty as alleged against him. If the law suffered a person to be punished upon mere rumour, or upon strong circumstance, accompanied with the communication of our best—our bosom friends, without the usual tests of truth, which have been established, we might well pause and wonder whereunto this would grow.

Gentlemen, you are the exclusive judges of the facts, and the court is to be the judge of the law when the facts are found by you. Murder may be defined to be, the unlawful killing of a human being in the peace of the republic, with malice prepense, or of forethought, by another human being who is of sound mind and discretion.

In this case, there is no pretence but that the defendant, at the time of the alleged killing of James Monroe, was of sound mind and discretion; so you are relieved of that part of the case. When you retire to your jury room, you will first proceed to inquire from the evidence, whether or not James Monroe be dead. If you do not find him to be dead, that ends the case, and your verdict must be, not guilty. If you

find him to be dead, you will proceed to inquire by what means he came to his death; if by violence, then inquire whether or not the defendant gave him the mortal wound. If you find he did not, that ends your inquiries; and he is entitled to a verdict of, not guilty. If you find the defendant gave him the mortal wound, you will then inquire whether the killing was lawful or unlawful. In law, every killing of one human being by another of sound mind, is unlawful, except such as the law excuses or justifies.

If a person when doing a lawful act, by accident kills another, it is excusable homicide. If a person kills another on a sudden attack in defence of himself, wife, child, parent, or servant, it is excusable homicide. If the proper officer executes the sentence of the law upon another, by taking his life pursuant to the judgment of a court legally rendered, it is justifiable homicide. If an officer of the law in the exercise of a particular legal duty, is forcibly resisted or prevented, and, without malice, kills the one who resists, it is justifiable homicide. If a homicide be committed to prevent the forcible commission of an atrocious crime, such as murder, robbery, rape, &c., it is justifiable: but it is not so if done to punish the offender after the crime has been committed. If you find any of these in favor of the defendant, then your verdict must be, not guilty; but if none of these things exist, then the killing, if it has taken place, is unlawful: in that event you will proceed to inquire, in regard to the malice prepense, or malice aforethought. Malice prepense, or malice aforethought, means premeditated malice, or malice thought of, before the killing occurred. It may be a meditation for a few moments only, or it may be of long standing—it may be owing to injury, real or imaginary, received from the deceased, by the accused. The law does not permit a person to take the redress of grievances into his own hands. Though the deceased may have seduced the defendant's wife, as he now alleges, still he had no right to take the remedy into his own hands. If, for seduction, the law inflicted the punishment of death, it would not justify nor excuse the injured party from guilt, if he inflicted death without a judgment of the law to that effect, nor even with such a judgment, unless he be the officer of the law appointed for that purpose. If as it is contended by the defendant's attorney, he killed Monroe in the name of the Lord, it does not change the law of the case. A man may violate a law of the land and be guilty, and yet, so far as he is concerned, do it in the name of the Lord. If, as it has been contended by the district attorney, the defendant, before he left the city, formed the design of killing Monroe, or if he so formed the design after he left, and before he met him, or if he formed it while in conversation with him, it was malice prepense or aforethought. If the deceased did seduce the defendant's wife, and begat a child with her; and if for this the defendant killed him, in law, the killing was unlawful.

Should you be of the opinion in all these things, that the defendant is guilty, then the place in which the act was committed becomes material. This would not in most cases affect the general result, provided the crime be committed within the jurisdiction of the court trying the accused.

The materiality in this case, arises in consequence of the peculiar relationship of the United States courts with the courts of the several States and Territories. The jurisdiction of the United States courts is separate and distinct from the jurisdiction of the State courts. But in the Territories, the same judges sit in matters arising out of the constitution and laws of the United States, as well as the laws of their respective Territories. This, to me, has been the most difficult part of the case. The territorial courts being of a mixed jurisdiction, partly national and partly local in their organization, it becomes important to keep in view these two jurisdictions. When sitting as a court of the United States, we must try criminals by the laws of the United States, and not by the Territorial laws; we must look to them for our authority to punish violators of the law.

When sitting as Territorial courts, we must try criminals by the laws of the Territory, and look to them for our authority to punish. If the laws of the United States do not authorize us to punish in a case like the present, as we are now sitting as a United States court: the defendant for this reason is entitled to a verdict of, not guilty.

The United States have no right to pass a law to punish criminals, except in those

cases which are authorized by the constitution. These may be said to be national in their character, and to extend to all places under the *sole* and *exclusive jurisdiction* of the United States, but they do not extend to those places within the United States, when there is an existing State or Territorial jurisdiction, unless they are to protect its necessary internal authorities, such as protecting its postal arrangements, its revenue laws, its courts and officers, and the like cases. There is a large extent of country between this city and the Missouri river, over which the United States have the *sole* and *exclusive* jurisdiction: and there is a part of this same country within the jurisdiction of the State of Missouri, and another part within the jurisdiction of this Territory.

It is the right of every American citizen to have full and ample protection in the enjoyment of life, liberty, and happiness; and the duty of the United States, in those places where it has the sole and exclusive jurisdiction, to extend that protecting hand over them; and the duty of the States and Territories in their respective jurisdictions, subject to the constitution and laws of the United States, to extend a like protecting hand. By this you will see that the United States, when it established the Territorial governments, giving them the right of legislation, created a jurisdiction within its own jurisdiction, but subject to its supervisory control: therefore it has not the *sole* and *exclusive jurisdiction* within the limits of the existing Territories.

By the 3rd section of the act of Congress, approved April 30, 1790, chapter 9, it is enacted, "that if any person or persons shall, within any fort, arsenal, dock-yard, magazine, or any other place or district of country, under the *sole* and *exclusive* jurisdiction of the United States, commit the crime of wilful murder, such person or persons on being thereof convicted, shall suffer death."

You see by this law, the crime must be committed within the places over which the United States have the *sole* and *exclusive jurisdiction*. You will look to the evidence given you in court for the facts of the case; if you find the crime, if any has been committed, was committed within that extent of country between this and the Missouri river, over which the United States have the *sole* and *exclusive jurisdiction*; your verdict must be, guilty. If you do not find the crime to have been committed there, but in the Territory of Utah, the defendant for that reason, is entitled to a verdict of, not guilty. If, in any of these points, you entertain reasonable doubts, you may give the defendant the benefit of these doubts. Reasonable doubts are not mere capricious doubts, but such as reasonable men may honestly entertain. We often have painful duties to discharge, but ought not for this reason to shrink from duty. It is better to bear with many wrong acts, than for the accomplishment of a given object, to depart from the great and well-approved principles on which mainly depend our lives, liberty, and happiness. Gentlemen, the case for the present, is committed to your consideration.

Jurors' verdict, "NOT GUILTY."

[We have devoted all the space we have to spare for the trial of Howard Egan, in publishing Esquire Smith's plea, and Judge Snow's charge to the jury, which, we think, will sufficiently explain the nature of the trial, without comment, and prove a sufficient warning to all unchaste reprobates, that they are not wanted in our community; and all editors who have been publishing that "the Mormons are a set of lawless debauchees and prostitutes," may do well to publish said plea, charge, and verdict, for the special benefit of their readers; for it may be the means of saving some of them from a similar fate.—*Deseret News.*]

A BILL TO ESTABLISH A TERRITORIAL GOVERNMENT FOR UTAH, PASSED BY THE CONGRESS OF THE UNITED STATES, SEPTEMBER 7TH, 1850.

(*From the "New York Herald."*)

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled*, That all that part of the Territory of the United States, included within the following limits, to wit: bounded on the west by the State of California, on the north, by the territory of Oregon, and on the east and south by the dividing ridge which separates the waters flowing into the Great Basin from those flowing into the Colorado river, and the gulf of California, be, and the same is hereby created into a temporary Government, by the name of the Territory of Utah; *Provided*, That nothing in this act contained, shall be construed to inhibit the Government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States. And when the said Territory, or any portion of the same shall be admitted as a State, it shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of admission

Sec. 2. The executive power and authority in and over said Territory of Utah, shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, shall be Commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of Superintendant of Indian affairs, and shall approve all laws passed by the Legislative Assembly before they shall take effect: he may grant pardons for offences against the laws of said Territory, and reprieve for offences against the laws of the United States until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

Sec. 3. There shall be a Secretary of said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first day of December in each year, to the President of the United States, and, at the same time, two copies of the laws to the Speaker of the House of Representatives, and the President of the Senate, for the use of Congress And in case of the death, removal, or resignation, or other necessary absence of the Governor from the Territory, the Secretary shall have, and is hereby authorized and required to execute and perform, all the powers and duties of the Governor during such vacany or necessary absence, or until another Governor shall be duly appointed to fill such vacancy.

Sec. 4. The Legislative power and authority of said Territory, shall be vested in the Governor and Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and House of Representatives, giving to each section of the territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of the district for which they

may be elected respectively. Previous to the first election, the Governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the Territory to be taken, and the first election shall be held at such time and places, and be conducted in such manner as the Governor shall appoint and direct; and he shall, at the same time, declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected having the highest number of votes in each of said council districts for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the person or persons authorized to be elected, having the highest number of votes for the House of Representatives, equal to the number to which each county or district shall be entitled, shall be declared by the Governor to be duly elected members of the House of Representatives: *Provided*, That in case of a tie between two or more persons voted for, the Governor shall order a new election to supply the vacancy made by such a tie. And the persons thus elected to the Legislative Assembly shall meet at such place, and on such day as the Governor shall appoint; but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, That no one session shall exceed the term of forty days.

Sec. 5. Every free white male inhabitant above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this Act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, including those recognized as citizens by the treaty with the Republic of Mexico, concluded February second, eighteen hundred and forty-eight.

Sec. 6 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; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly and Governor shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect.

Sec. 7. All township, district, and county officers, not herein otherwise provided for, 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 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 officers.

Sec. 8 No member of the Legislative Assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term: and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the government of said Territory.

Sec. 9. The judicial power of said Territory shall be vested in a Supreme Court District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a Chief justice and two Associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the Seat of Government of said Territory annually, and they shall hold their offices during the period of four years.

The said Territory shall be divided into three judicial districts, and a District Court shall be held in each of said districts by one of the Justices of the Supreme Court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several Courts herein provided for, both appelate and original, and that of the Probate Courts and of Justices of the Peace, shall be as limited by law: *Provided*, That Justices of the Peace shall not have jurisdiction of any matter in controversy when the title of boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said Supreme and District Courts, respectively, shall possess chancery, as well as common law jurisdiction. Each District Court, or the Judges thereof, shall appoint its Clerk, who shall also be the Register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said District Courts to the Supreme Court, under such regulations as may be prescribed by law; but, in no case removed to the Supreme Court, shall trial by jury be allowed in said Court. The Supreme Court, or the Justices thereof, shall appoint its own Clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed Writs of error and appeals from the final decisions of said Supreme Court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed 1000 dollars; except, only, that in all cases involving title to slaves, the said writs of error, or appeals, shall be allowed and decided by the said Supreme Court, without regard to the value of the matter, property, or title in controversy; and except also that a writ of error or appeal shall be allowed to the Supreme Court of the United States for the decision of the said Supreme Court created by this act, or of any Judge thereof, or of the District Courts created by this act, or of any judge thereof, upon any writ of habeas corpus, involving the question of personal freedom; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the Circuit and District Courts of the United States; and the said Supreme and District Courts of the said Territory, and the respective Judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the Judges of the United States in the district of Columbia; and the first six days of every term of said Courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all such cases shall be made to the Supreme Court of said Territory, the same as in other cases. The said Clerk shall receive in all such cases, the same fees which the clerks of the District Courts of Oregon Territory now receive for similar service.

Sec. 10. There shall be appointed an Attorney for said Territory, who shall continue in office for four years, unless sooner removed by the President, and who shall receive the same fees and salary as the Attorney of the United States for the present Territory of Oregon. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President; and who shall execute all processes issuing from the said Courts, when exercising their jurisdiction as Circuit and District Courts of the United States; he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees as the Marshal of the District Court of the United States for the present Territory of Oregon; and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

Sec. 11. The Governor, Secretary, Chief Justice, and Associate Justices, Attorney and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation, before the District Judge, or some Justice of the Peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the

laws now in force therein, or before the Chief Justice or some Associate-Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the said Secretary among the executive proceedings; and the Chief Justices and Associate-Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation, before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the Secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of fifteen hundred dollars as Governor, and one thousand dollars as Superintendent of Indian affairs. The Chief Justice and Associate-Justices shall each receive an annual salary of eighteen hundred dollars. The Secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarterly, at the treasury of the United States. The members of the Legislative Assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof, and three dollars each for every twenty miles travel in going to and returning from the said sessions, estimated according to the nearest usually travelled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the Governor, to defray the contingent expences of the Territory; there shall also be appropriated, annually, a sufficient sum to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States, for the manner in which the aforesaid sum shall have been expended.

Sec. 12. The Legislative Assembly of the Territory of Utah shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Governor and Legislative Assembly shall proceed to locate and establish the Seat of Government for said Territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said Governor and Legislative Assembly. And the sum of twenty thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said Territory of Utah, to be applied by the Governor and Legislative Assembly, to the erection of suitable public buildings at the Seat of Government.

Sec. 13. A delegate to the House of Representatives of the United States to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives. The first election shall be held at such time and places, and be conducted in such manner as the Governor shall appoint and direct; and at all subsequent elections, the times, places and manner of holding the elections shall be prescribed by law. The persons having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly: *Provided*, that said delegate shall receive no higher sum for mileage than is allowed by law to the delegate from Oregon.

Sec. 14. The sum of five thousand dollars be, and the same is hereby appropriated out of any monies in the Treasury not otherwise appropriated, to be expended by and under the direction of the said governor of the Territory of Utah, in the purchase of a library, to be kept at the Seat of Government for the use of the Governor, Legislative Assembly, Judges of the Supreme Court, Secretary, Marshal, and Attorney of said Territory, and such other persons, and under such regulations as shall be prescribed by law.

Sec. 15. When the lands in the said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same

Sec. 16. Temporarily, and until otherwise provided by law, the Governor of said Territory may define the judicial districts of said Territory, and assign the Judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding Courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him: but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the Judges, and alter the times and places of holding the Courts, as to them shall seem proper and convenient.

Sec. 17. The Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, as far as the same or any provisions thereof may be applicable.

[The foregoing Bill received the signature of the President of the United States on the 9th day of the same month in which it was passed, and thereby became Law.]

NAMES OF THE TERRITORIAL OFFICERS.

On the 28th of September, 1850, His Excellency MILLARD FILLMORE, President of the United States, with the advice and consent of the Senate, appointed the following gentlemen, as public officers for the Territory of Utah:—

Governor:

BRIGHAM YOUNG, of Utah.

Secretary:

B. D. HARRIS, of Vermont.

Chief Justice:

JOSEPH BUFFINGTON, of Pennsylvania. *

Associate Justices:

PERRY E. BROCCHUS, of Alabama.

ZERUBBABEL SNOW, of Ohio.

U. S. Attorney:

SETH M. BLAIR, of Utah.

U. S. Marshall:

JOSEPH L. HEYWOOD, of Utah.

* Mr. BUFFINGTON declined serving as Chief Justice, whereupon His Excellency President FILLMORE appointed LEMUEL G. BRANDEBURY to that office.