

Captain Richards's command was made up as follows: Company C, Captain Allen, Lieutenant Palmer, and H, Captain Whitall and Lieutenant Castle, Sixteenth infantry; A, Captain Grow, Lieutenant Thompson; B, Captain Lund, Lieutenant Larsen, and C, Captain Naylor, Lieutenant Allford, N. G. U.; a battery consisting of two of the 3-inch rifles of the post, commanded by Lieutenant Cowles, and troop C, N. G. U., Captain John Q. Cannon. Captain Richards's aids were Lieutenants Cowles and Wright, while Lieutenant Lassiter had the militia infantry under his direct supervision.

It is estimated that there were no less than from ten to twelve thousand interested spectators. The hillside fairly echoed with volleys of musketry and booming of cannon. Smoke obscured the vision and the reservation looked like one great and tremendously real battle field. Captain Richards's men were attacked on the right and left flanks simultaneously. They fell back a trifle but soon the enemy was repulsed again.

The final assault was a splendid piece of military work and showed a knowledge of scientific warfare that evoked applause, admiration and commendation from General Penrose, General Ottinger, Governor West, General Lew Wallace and others who witnessed it. Even the retreat of Captain Richards's men, driven inch by inch, fighting as they came in, was praised to the utmost.

"CONSTITUTION MAKING."

The lecture of Dr. Tanner Thursday at the Latter-day Saints' College on "Constitution Making" dealt with the question of precedents and their use in deciding questions likely to arise in a constitutional convention where men resort to precedents, as they do in law, to establish their case. It would not be strange that precedents were found for almost any side of a question members advocate, in view of the fact that more than 200 such conventions have been held in the United States, either for the purpose of making new constitutions or amending the old. Before precedents can be used as a guide it ought to be known in advance whether the convention in question were a legitimate or a revolutionary one. The latter need not of necessity have been accompanied by bloodshed nor yet be any disturbance of the peace. It will be sufficient if it be irregular, without the authority of some competent government duly acknowledged. It may be a necessity of a natural equity and yet be illegitimate. Nor will such a convention become a precedent when, by adoption of its constitution and acquiescence of the whole people, it is made legitimate, if in its birth it was illegitimate.

Precedents can be good only when founded upon some settled principle or rule of law; and they are never safe guides either when conditions are revolutionary or when their proceedings are irregular.

All calls for conventions ought to proceed from some of the departments of an organized government. It is thought such a call might proceed from the executive, judicial or legislative department, though the last is for

many reasons the one which has generally exercised such powers, and that because it is always a mixed question of law and facts. Right here it might be noted that constitution making, like legislation, is not a question merely of law; but a mixed one in which both law and fact are so blended as to make both judge and jury an element essential in making the law as in its interpretation. The organic law is in the fullest sense a representation of the organic life of the people, and the members must be the best judges of what that life is, and pro tanto a jury to decide the facts. That life is composite and involves the interest of the stranger as well as that of the oldest citizen. It further involves the manifold interests of the state; farming, commercial and professional, and requires representation from each. But these fundamental proceedings, both respecting the call and proceedings, have not always been regular; and as will be seen much that has been done in conventions has no justification in law and can therefore be no precedent for a regularly organized body of constitution makers.

These irregular and revolutionary conventions were most frequent during the revolt from the parent government and during the civil war and the period of reconstruction. The law of self-preservation is a first law in government as in life, and the arguments from the necessities of a case can never be a justification for proceedings under normal conditions. It may be necessary for self-preservation to take human life or to steal to prevent death; but such abnormal circumstances can never be quoted as precedents in justification of either theft or homicide.

If the constitution makers learn to make these discriminations in their discussion of precedents to establish their respective views they will relieve themselves from wrangles into which such bodies of men have fallen in other states.

Before the convention of a state or nation can become a safe guide to follow, the circumstances and conditions of its existence must be known. The history therefore of constitutional conventions is hardly less important than the principles and rules supposed to govern their proceedings. In view of these facts the three conditions under which territories have existed and under which they have been admitted into the Union must be of peculiar interest to the constitution makers.

A FATAL SHOOTING.

A most sanguinary and exciting scene enacted in a desolate and uninviting den at No. 770 east Sixth South street about 11 o'clock Thursday night.

Briefly told, the facts are that Private Fred Neibergall, of Company H, Sixteenth Infantry, Fort Douglas, was fatally shot at the time and place given, in the filthy resort of a woman whose name appears on the police arrest register as "Mrs. A. B. Binkley, American, aged 46," and that "Doctor" Dan Kesler, a sort of migratory physician of the "old school," and suspected rival of the wounded soldier, is in jail awaiting a charge of murder to be preferred against him.

It is supposed that Neibergall had followed Kesler and the woman to the

haunt of vice in the eastern part of the city, or that he accompanied her there while Kesler had temporarily absented himself and that the latter followed; that a quarrel ensued and that Kesler opened fire on his youthful rival, who is very little if any more than twenty years of age. Three pistol shots were heard in the neighborhood by the Squires boys, who hastened to the scene of the shooting and arrived in time to hear rapidly retreating footsteps, also to see Mrs. Binkley disappear down town.

The cries of a wounded man next attracted their attention and at the rear of the house they found the young soldier in a crouching position, saturated with blood and suffering intense pain, and giving vent to screams of drunkenness and delirium. At first he was loth to talk but finally admitted that Doc Kesler had done the shooting. Bloody footprints and finger marks were seen upon the floor and the blood-bespattered walls told the story of a terrible hand to hand struggle. A broken sash at the back of the house showed where the wounded man in his desperation and desire to escape had carried a portion of the framework with him as he jumped out of the building.

The police were notified of the affair and Neibergall was removed to the post hospital. It appears that he received but one shot, the stomach being completely perforated. His recovery is said to be an impossibility and his death may occur at any moment.

Mrs. Binkley was arrested at the Ensign House, on Commercial street, at an early hour this morning, but disclaims all knowledge of the affair. She has a daughter in the city jail serving a sentence for prostitution. This girl, she says, was Neibergall's "sweetheart," while she herself was the "doctor's."

Kesler was apprehended about 4 o'clock this morning by Captain Donovan and Detective Sheets in the old Dunford residence, South Temple street. He, too, denied all knowledge of the shooting or any of the particulars connected with it. In his possession was a revolver, which the officers say has been discharged very recently.

A NARROW ESCAPE.

John Rockwell had a very narrow escape from injury and death one day last week while out driving with his family and some friends, says the *Tooele Transcript*. He had taken his wife and three children, and Clara Anderson and three children, to Point Lookout for a drive. Just before dark, as they were coming down this side of the pass the hill was a little steep and they did not have any brake, so the wagon crowded the team a little. The horses became frightened and ran down the canyon at lightning speed. After running about a quarter of a mile the wagon upset and tipped the whole crowd into a washout and the wagon came in on top of them. The doubletree broke and away went the team. As it happened, the wagon fell on the sides of the washout and no one was hurt. Mr. Rockwell had to walk to Wright's ranch for a team, which made them very late getting home. He found his team next day at Government.