

which he alleges occurred on the 1st day of August, 1880, so far as there is any issue made in the objection; and if that election was valid then the commission was valid; if the election was invalid, then the commission was without authority. The election was held under the provisions of chap. 11, of the statutes of 1878, commencing on page 27. The latter clause of section 4 of that chapter provides:

"The Territorial Treasurer and Auditor of Public Accounts shall be hereafter elected by the qualified voters at the general election in August, 1878, and biennially thereafter, and the present incumbents shall hold their respective offices and perform the duties of the same until the next general election, and until their successors shall be elected and qualified."

This law was approved, February 22, 1878, two years, I believe, before the election occurred at which the respondent claims to have been elected. This chapter should also probably be considered with chapter 1 of the statutes of the Compiled Laws of Utah, 1876. The first section of that statute provides:

"That a Treasurer and Auditor of Public Accounts shall be elected by the joint vote of both houses of the Legislative Assembly, whose term of office shall be four years and until their successors are elected and qualified, unless sooner superseded by legislative action."

It seems that this provides for the election by the joint vote of both of the houses of the Legislative Assembly. In this chapter there are a number of sections and provisions which it is not necessary to read relating to this office, and the office is described by mentioning the functions that pertain to it—by mentioning the authority which the officer may exercise, and his qualification. Section 2 provides for the giving of bonds and taking the oath of office; Section 5, for the giving of bonds and taking the oath of office again; Section 6 refers to the duty of the Auditor, and Section 8 relates to the filling of vacancies, and there are a number of other provisions which relate to this office.

It is insisted that if this law is invalid, then there are no such offices as the offices of Auditor and Treasurer; that it is impossible to hold that the portion of the statute which relates to the officer and establishes the office can exist without the provisions relating to his election. This statute had in view two purposes: One was the establishment of the office or offices mentioned, and the other was the mode of selecting the officer, and the description of the functions and duties of the officer. The rule is, where a provision of a statute consists of several provisions essential to the purpose, and one of these provisions is invalid, all of the provisions fail because it is to be presumed that the Legislature intended all to stand together, and it would be impossible to carry into effect the statute's purpose without the benefit of all the provisions relating to that purpose. The office of Auditor is one thing and the office is another. The office in the legal sense, and as I believe it was once stated by Chief Justice Marshall, is immortal—that is to say it does not depend upon the life of any individual; it continues while the officers come and go; and the office is one thing and the officer another. The office may be established without providing for the mode of filling it. The office may be created and it may be filled by election, by the Legislative Assembly, or by the people of the Territory, or by appointment of the Governor, if the law so provides, or by appointment of the Governor by and with the advice and consent of the Council or Assembly. I am disposed to hold that these provisions, these purposes, are so separate and distinct that the law may be held invalid, so far as it relates to the mode of filling the office and the selection of the officer, and remain valid so far as it establishes the office. The Legislature unquestionably so understood it, because they refer to these respective offices in the statutes of 1878, and they change the mode of filling the office. Instead of the office being filled as it was before, they provide that the Treasurer and Auditor shall be elected by qualified voters at the general election of August, 1878, and biennially thereafter.

The question, therefore, comes at last, and it is the question in this case, as to whether this law of 1878, and the statutes of 1882 are valid. These statutes are valid if they were within the Legislative power of the Territorial Legislature. The warrant for the exercise of the powers of the Territorial Legislature is found in the Organic Act of the Territory, or in the acts of Congress relating to the Territory, which constitute the Organic Act. Section 6, on page 30 of the statutes of 1876, provides:

"And be it further enacted: That the Legislative power of said Territory shall extend to all rightful subjects of legislation, consistent with the constitution of the United States and the provisions of this act."

That was the power of the Territorial Legislature, of course, as it was then conferred. According to the interpretation of Congress and of the Supreme Court of the United States, it must not only be consistent with the Constitution of the United States and the provisions of this act, but also consistent with such other acts as Congress may adopt. The question is, therefore, whether the statute providing for the election by the people of the Auditor is consistent with the Organic Act. Section 7 provides:

"And be it further enacted: That 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."

That is the first clause of the section, and it relates to township, district and county officers. The next clause is:

"The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for."

That clause seems to be clear and plain, as the former one is. It is a statement in plain language that "the Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for." The first clause does not provide for the appointment or election of Territorial officers; and hence by that provision they are not provided for. It is insisted that the last clause of the section renders the meaning doubtful as to the mode in which the Territorial officers shall be selected. That clause is:

"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."

That relates to the appointment in the first instance, before the Territorial government, through the Legislature, has provided the mode of their selection. Still, there might be some difficulty in conceiving, and there would be room for controversy, as to the precise condition to which this last clause is applicable. It certainly cannot apply to the appointment or election of any such officers, except those who are appointed in the first instance and who would hold their offices until the end of the first session of the Legislative Assembly. I am unable to see that that renders the two first clauses of this section ambiguous or of doubtful significance. As to those two clauses I can see no room for construction. It is a mere matter of interpretation, and the language is plain. Taking these two sections, then, together, it would seem that the action of the Territorial Legislature in passing this law was without authority. It did not extend to this subject—that is, the subject of appointing a Territorial Auditor, because that, by the seventh section, is given to the Governor, by and with the advice and consent of the Legislative Council.

It is insisted that this Territorial statute has been acquiesced in by Congress, and I believe it was also insisted that the Territorial Legislature had acquiesced in it and therefore had ratified it. If the Territorial Legislature had not the authority to pass the law, in the first instance, it had no authority to ratify it subsequently. A legislative body may ratify an act which they have done, without authority, when they had the authority to do the act originally. When a legislative body has authority to pass a law, if in consequence of some defect in their proceedings and in their action, the law is invalid, they may afterwards ratify it. But in this case the Territorial Legislature had not the authority originally. This is not like the case, precisely, where a legislative body passes a law which they have a right to pass, and in consequence of some defect the law is invalid. Here the Congress of the United States did not pass this act providing for this election. They granted to the Territory certain powers—specified powers. It is true that the powers of the Legislature were described in general terms; but the Territory is a government of enumerated and delegated powers, and can only exercise those which are given expressly or are necessary to the exercise of such express powers. It is said that it is the duty of the Territorial Legislature, through the Secretary of the Territory, to report these laws to Congress—all acts of the Territorial Legislature—and Congress may disapprove of them. But the approval of Congress is not essential to the validity of the law, nor does the invalidity of the law depend upon the disapproval of Congress.

I am of the opinion that this act of the Territorial Legislature is invalid, without authority, and contrary to the seventh section. A similar section has been adopted in the general law applicable to Territories, and the Territorial Legislature of Idaho passed an act contrary to that provision, and the Supreme Court of that Territory held that the act of the Territorial Legislature was without authority. In substance it is the same question as here made. Reference has also been made to the *Eugenebrecht* case and the *Snow* case. I do not understand that the question there was raised as to whether one department of the Territorial Legislature should appoint the officers, or another; or as to whether the officer should be elected by the people. The laws in question there seem to have been, in the estimation of the Supreme Court, of doubtful significance, and in determining the question, they looked at the long acquiescence of Congress in construing the law, and considered it in the light of that acquiescence and approval. But I do not understand that where the law is plain a long acquiescence will ratify an act of the Territorial Legislature contrary to that law and the law of Congress.

There were a number of other questions raised and discussed in the hearing of this motion, but I am of the opinion that none of them are well

founded, and that this justification shows no right in the respondent to hold this office. It is clearly in violation of the Organic Act. That being so, the demurrer to the complaint is overruled and the motion for judgment is allowed. I suppose in both of these cases the same question arises, therefore the same order and motion will be allowed in each.

FROM A LADY DELEGATE.

ON THE RECENT PROTEST.

The Washington Star of the 10th inst., contains the following letter from one of the sisters representing the women of this Territory at the Nation's capital:

WASHINGTON, April 8, 1886.

To the Editor of The Evening Star:

In The Evening Star of April 7th, I find, under the heading "A Mormon Petition," some errors stated that I am prepared to correct, in reference to the memorial of the women of Utah, recently presented in the Senate of the United States by the Hon. Henry W. Blair. The memorial was drafted by a committee of "Mormon" women whose signatures were attached to each engrossed copy, this committee having been nominated at a mass meeting of over two thousand women from all parts of the territory, while assembled to protest against the wrongs and grievances under which they are suffering from the maladministration of the Edmunds law of 1882; and also against the disfranchisement of the women of Utah, who have voted for sixteen years, and who are not even accused of violating any law, and other measures included in the Edmunds bill, which recently passed the Senate of the United States.

"Mormon" women, have surely, some rights left that ought to be respected, and one of these is the right to petition the President and the Congress of the United States for redress, and of presenting to them and to the people, facts and incidents in relation to the existing condition of affairs in the Territory where they reside, which are of vital importance to the welfare of the community, and specially oppressive in application to those most deeply interested.

The Edmunds law of 1882 is sufficiently rigid when enforced, to satisfy those who are really anxious to abolish "polygamy," and to adopt harsher measures and add severity and cruelty to the administration is not only an injustice to those already suffering punishment but amounts to positive persecution.

Do the American people forget that these women, against whom such a pressure of circumstances is brought to bear at the present time, are their sisters in the one great family of the Union; and that they have human hearts and affections as tender and true as their own? Do they realize that it is simply because of their religious faith, and for a principle of it, that they hold to be sacred and divine, that they are suffering these hardships? If they do, is it not in the interest of humanity to see that no cruelty is inflicted upon these women and children, but that the law be humanely and wisely administered by men who have common sympathy and true respect for motherhood and the purity of little children.

That "Mormon" women are harassed and annoyed and insulted unnecessarily by unprincipled men employed as deputy marshals and spies, who have no genuine respect for womanhood and think any measure will be justified in dealing with the wives and daughters of "Mormons," is very apparent, and certainly calls loudly, and should not call in vain, for an investigation in regard to these offenses, and a radical change in dealing with such a delicate matter as the severing of family ties and the breaking up of homes that were dear to those who toiled together to establish them, and whose hearts are entwined around each other so closely that to separate them is to inflict a wound that only divine love can ever heal.

The incidents cited in the memorial referred to are only a few of the many cases in which insults and outrages upon propriety and even common decency have been committed by men who usurp authority in out of the way districts and places, intimidating with threats and in various ways defenseless women and children. When at home in Salt Lake City I am almost daily in receipt of letters from different parts of Utah, Arizona and Idaho, giving information in detail of facts pertaining to arrests, serving of writs, warrants and the misconduct of these deputies and spies. Houses are broken into in the night time, the sleeping apartments of women are carelessly invaded and the occupants insulted. Whole families are arrested and dragged before grand juries, and women and children are terrorized and interrogated in an indecent manner by hectoring district attorneys and their assistants in office. Do you think such things reasonable because the women are "Mormons?"

In the interest of motherhood, of young women and children of tender years, and in the interest of universal humanity, I appeal to the mothers of America, and entreat them to consider the situation in Utah, brought feelingly and forcibly to their notice in the memorial just presented to Congress, and would ask them to investigate the subject without prejudice, before further cruelties and greater hardships are im-

posed upon a people already suffering persecution for conscience sake.

As one of the delegates sent here to present the memorial of the women of Utah to the President and to the Congress of the United States, I felt called upon to reply to the unfavorable notice of it in your paper; and as I have been delegated on other occasions to represent the "Mormon" women at the national capital and elsewhere, and am the editor of the "Mormon" women's paper, I feel authorized to speak in their behalf, and to defend their interests in whatever way possible, and especially at this time, when the flood of prejudice and misrepresentation is brought to bear against them so heavily; and as the friend of all who love justice and desire to protect human rights, I remain, very respectfully, etc.,

EMMELENE B. WELLS.

Editor Woman's Exponent,

Salt Lake City, Utah.

MALAD VALLEY ITEMS.

SUBSTANTIAL SYMPATHY FOR A WIDOW.

SAMARIA, Oneida County, Idaho, April 20, 1886.

Editor Deseret News:

It is not very often that any correspondence from this place appears in your valuable paper. Samaria is situated in Malad Valley, about eight miles southwest of Malad City—is a prosperous little place, containing about 70 families, most of whom are Welsh. The people, in general, enjoy good health, and have nearly finished putting in their crops.

Last week about 30 teams turned out to plow and plant the farm of Mrs. Williams—the widow of Samuel R. Williams, an account of whose death lately appeared in the News.

The widow, relatives and friends of the deceased feel very grateful to the people for their kind and much appreciated assistance in time of need.

Yours respectfully,
D. P. DAVIS.

DEATHS.

HOOD.—At Almy, Uintah County, Wyoming Territory, April 18th, 1886, of dropsy; Angelina, daughter of Peter and Mary Hood; born April 4th, 1874, at East Benhar, Linlithgowshire, Scotland.
Mill. Star, please copy.

BROWN.—At Springville, on the 11th inst., Lydia Miller Brown. Deceased was born at New Holland, Lancaster County, Penna., March 4, 1814. She became a member of the Church of Jesus Christ of Latter-day Saints soon after its organization, and was earnestly and faithfully associated therewith until death.—[COM.]

POPE.—At Randolph, Utah, April 13, 1886, of dropsy, Elizabeth Pearce, wife of Edwin T. Pope.

She was born May 6, 1845; was a kind and affectionate wife and mother, and a faithful Latter-day Saint. She leaves a husband, three children and a host of friends to mourn her death.

BROWN.—In Joseph City, Sevier Co., April 5, 1886, by accidental drowning, Lilly, daughter of Nelson and Mary O. Brown; aged 1 year 3 months and 13 days.

THOMSTROFF.—In this city, April 24, 1886, of pneumonia, August Frederick Thomstroff, son of August Thomstroff and Ingeborg Rosine Nielson, born March 31, 1838, at Flensburg, Schleswig-Holstein, Prussia.

SPROUL.—In this city, April 25th, 1886, Andrew Sproul; born February 16th, 1816, at Paisley, Renfrewshire, Scotland.
Funeral service at Twenty-first Ward meeting house on Tuesday, commencing at 3 p. m. Friends invited to attend.

BUCKLEN'S ARNICA SALVE.

The BEST SALVE in the world for Cuts, Bruises, Sores, Ulcers, Salt Rheum, Fever Sores, Tetter, Chapped Hands, Chilblains, Corns, and all Skin Eruptions, and positively cures Piles, or no pay required. It is guaranteed to give perfect satisfaction, or money refunded. Price 25 cents per box.

FOR SALE AT Z. C. M. I. DRUG STORE.

An Enterprising, Reliable House.

Z. C. M. I. can always be relied upon, not only to carry in stock the best of everything, but to secure the Agency for such articles as have well-known merit, and are popular with the people, thereby sustaining the reputation of being always enterprising, and ever reliable. Having secured the Agency for the celebrated Dr. King's New Discovery for Consumption, will sell it on a positive guarantee. It will surely cure any and every affection of Throat, Lungs, and Chest, and to show our confidence, we invite you to call and get a Trial Bottle Free.

THE BLOOM OF BEAUTY

On her brow indicates the glow of health within. What a change from the invalid of a few months ago. Do you know the secret of her renewed health? We will tell you. When she found that the pleasant liquid fruit remedy—Syrup of Figs—was agreeable to the taste as it is effective in cleansing the system, calming the nerves and awakening the Liver, Kidneys, Stomach and Bowels to a healthy activity, she began using it, and you see the result. Ladies wishing to know if Syrup of Figs really possesses such wonderful efficacy, can obtain trial bottles free of charge at Z. C. M. I. Drug Store, Wholesale Agents, Salt Lake City.

When irritation of the throat causes a tickling cough, use Red Star Cough Cure, which will effect immediate and permanent relief. One of Brooklyn's Board of Health officers recommends it as purely vegetable and perfectly harmless. Price, 25 cents.

Over four hundred grains of a deadly poison are taken out of the blood every day by the kidneys, if they are in health; if not, they can be fully restored when every thing else fails by Warner's safe cure.

Good Luck for an Engineer.

URBANA, Ill.—I had a severe fall upon my right kidney. Caused a great deal of soreness, but thought I would wear it out. Was running express engine, 212 miles, with four trips a week. The strain and jarring came near killing me. Cannot describe my suffering. Physicians pronounced it catarrh of the bladder. After using thirty bottles of Warner's safe cure, I am now a well man.—A. S. HAMPTON, ex-Chief Engineer, Div. 143, Brotherhood of Locomotive Engineers.

"SAFE, reliable and pleasant to take," that excellent preparation, Dr. Henley's Celery, Beef and Iron. For sale by Z. C. M. I. Drug Store, and all Druggists.

AN ANSWER WANTED.

Can any one bring us a case of Kidney or Liver Complaint that Electric Bitters will not speedily cure? We say they can not, as thousands of cases already permanently cured and who are daily recommending Electric Bitters, will prove. Bright's Disease, Diabetes, Weak Back, or any urinary complaint quickly cured. They purify the blood, regulate the bowels, and act directly on the diseased parts. Every bottle guaranteed.

For sale at 60c. a bottle at at Z. C. M. I. Drug Store.

For Bronchial, Asthmatic and Pulmonary Complaints, Brown's Bronchial Troches manifest remarkable curative properties. Sold only in boxes.

A Great Southern Remedy.

Simmons' Liver Regulator, purely vegetable, is universally used in the South to arouse the torpid liver to healthy action. It cures malaria, biliousness, dyspepsia, headache, constipation and piles. No nausea or griping. It is most effective in starting the secretions of the liver, causing the bile to act as a cathartic. Regulates the bowels and imparts vigor and health to the whole system.

Dr. Henley's Popular Remedy, Celery, Beef and Iron.

Has the largest sale, and has relieved and cured more persons afflicted with nervous troubles than any one known remedy.

For sale by Z. C. M. I. Drug Store, and all Druggists.

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When you feel USED UP. Then the system requires help to throw off the accumulations of the STAGNANT PERIOD, winter.

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Stimulate the DIGESTIVE ORGANS, regulate the LIVER and cleanse the KIDNEYS. A wine-glassful before each meal will make you BELIEVE this statement.

They CURE DYPSONOMANIA (the Alcohol Disease) by their charming action upon the STOMACH, restoring its natural tone and entirely destroying the MORBID APPETITE for stimulants. MALARIA disappears before them, and PERFECT HEALTH resumes its sway.

For sale by all druggists and wine merchants.