DESERET NEWS:
WEEKLY.

TRUTH AND LIBERTY.

PRINTED AND PUBLISHED BY
THE DESERET NEWS COMPANY.

CHARLES W. PENROSE, EDITOR.

WEDNESDAY, - JAN. 19, 1881.

NATURALIZATION AND RECORDS.

THE dispute over the naturalization of Hon. Geo. Q. Cannon, although entirely extraneous to the question of his right to the certificate of election, and outside of the sphere of gubernatorial jurisdiction, has brought up some points that should be correctly understood. It seems to be the aim of some legal minds to mystify and confuse instead of to analyze and throw light on legislative enactments and propositions of law. And this is certainly the case in the documents presented by the protestant's counsel, in claiming the certificate for the person having the least number of votes at the election.

In the reply to the answer of Delegate Cannon, by J. McBride, attorney, quoted *in extenso* in the Governor's decision, the naturalization laws and the old Utah Statutes are so mixed up as to cause confusion and lead to conclusions which are certainly erroneous. And this is aggravated by the citation of clauses from paragraphs in the naturalization laws which do not apply to the question in dispute. This may be in accordance with that species of special pleading commonly denominated pettifogging, but it is not consonant with the practice of high-minded and honorable members of the bar.

It is stated in that document, "that a naturalization could only take place in one of the District Courts," and the Utah Compilation of 1855, page 22, is cited to substantiate this. But there is no such provision on that page, nor any other page in that compilation so far as we can discover. And if there were, the laws of the United States provide for the naturalization of aliens, and the attorney who refers to the Utah statutes knows very well that they do not govern in naturalization nor in anything, if in conflict with the former. The naturalization laws in force at the time of Mr. Cannon's admission to citizenship, named the "supreme, superior, district or circuit court, in some one of the States, or a circuit or district court of the United States," as competent to admit aliens; and to make the matter plain, section III of the old naturalization statute says:

"And whereas doubts have arisen whether certain courts of record in some of the States are included within the description of district or circuit courts: Be it further enacted, that every court of record in any individual State, having common law jurisdiction, and a seal and clerk or prothonotory, shall be considered as a district court within the meaning of this act; and every alien who may have been naturalized in any such court shall enjoy, from and after the passing of this act, the same rights and privileges as if he had been naturalized in a district or circuit court of the United States."

The same provision is incorporated in the present naturalization laws; that is, that an alien may be admitted by "a court of record having common law jurisdiction and a seal or clerk." The Supreme Court could, therefore, naturalize as well as the District Courts. The Probate Courts of this Territory held and exercised common law jurisdiction, by virtue of legislative enactment passed under the provision of the Organic Act, which says that their jurisdiction "shall be as limited by law." Those courts had a clerk and seal, and were constituted by law courts of record. They acted under the naturalization laws and issued certificates of citizenship until their common law jurisdiction was taken away by the Poland bill, which, however, confirmed and validated their judgments and decrees up to the time of the passage of that bill. It has been disputed that the naturalization of an alien is in the nature of a judgment or a decree. But it has been judicially decided that it is in the nature of both. Chief Justice Marshall, in Spratt vs. Spratt, (4 Peters U. S. Reports 406) says:

"The various acts upon the subject submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge on both law and fact. The *judgment* is entered on record as the judgment of the Court. It seems to us, if it be in legal form to close all inquiry; and like every other judgment to be complete evidence of its own validity."

So much for the assumption that "naturalization could only take place in a District Court" at the time of Mr. Cannon's admission to citizenship.

The next assertion is that both the United States and the Utah statutes provide that unless the record of naturalization is made in a specified form the party "shall not be deemed a citizen."

We have shown that the Utah statutes do not and cannot govern in naturalization proceedings and that there is a law of the United States regulating those proceedings. On reference to the naturalization laws it will be seen that the words quoted, "shall not be deemed a citizen," refer only to the cases of aliens who claim to have resided in the United States between the 18th of June, 1798, and the 14th of April, 1802, and those claiming to have resided therein between the last named date and June the 18th, 1812. But Mr. Cannon did not obtain his papers under those provisions. He applied under the regulations concerning aliens who resided in the United States three years preceding their arrival at the age of twenty-one years; and that he complied with all that is required under those regulations is shown on the face of his certificate. The recording of this in *any* form was beyond his control. Neither does the law say in his case that if the record is not made "he shall not be deemed a citizen."

The certificate which he holds is evidence that so far as he was concerned he complied with the provisions of the law. If the court, or the clerk thereof, failed to perform the duty of recording the proceedings, must the citizen suffer the consequences of such omission? Justice says no. But what is the law? As we have shown, and as anyone may read, the naturalization laws do not say that in such case "he shall not be deemed a citizen." If there were no record whatever of the transaction in court there must be some remedy for the citizen. As a general rule, a court will not permit a party to suffer through any mistakes of its own. For proof of this see Clapp *vs.* Graves, 2 Hilt. 317. Neither will the mistakes of its officers be allowed to prevail to the injury of a party. (Chichester *vs.* Cande, 3 Cow. 29; Neele *vs.* Berryhill, 4 How., and many others.) On proof of the provisions of the law having been complied with the Court can amend its error, correct the record and right the party, just as it has power to vacate a process, order or judgment. Section 954 of the Revised Statutes of the United States provides that:

"No summons, writ, declaration, return, process, judgment, or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect or want of form, except those which, in cases of demurrer, the party demurring specially sets down, together with his demurrer, as the cause thereof; and such court shall amend every such defect and want of form, other than those which the party demurring so expresses; and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules, prescribe."

But in this case it appears from the certificate of the clerk of the Supreme Court of this Territory, that Mr. Cannon's naturalization *is* a matter of record. This certificate appears in the Governor's decision. The question then that remains is, what is a record? Must the account of the naturalization appear in the minutes of the Court to constitute a legal record? Coke upon Littleton (p. 260 *a*) defines a record to be "a memorial or remembrance in rolls of parchment, of the proceedings and acts of a court of justice," etc. And says that "During the term wherein any judicial act is done, the record remaineth in the breast of the judges of the court and in their remembrance, and therefore the roll is alterable during the term, &c." The book of court minutes is a modern institution, and does not constitute the only "memorial or remembrance" of the acts of the court. And as in naturalization cases the courts act entirely under the laws of the United States, unless there is some prescribed form of record given in those laws, the court may follow its own rule.

In the Superior Court of the City of New York, after 1858, printed blanks came into general use for making the preliminary proofs and taking the oath of allegiance. If the applicant and his witness, after having been duly sworn to make true answers, answered all questions put to them to the satisfaction of the court, the presiding judge, on admitting the applicant to citizenship, signified the fact of having made such adjudication by affixing the initials of his name to the application, and thereupon handed the papers to the clerk, with directions to do whatever might remain to be done; the clerk then, in pursuance of such adjudication, fiat and directions, administered, and the applicant in open court took the oath of allegiance, and a certificate was given to the applicant as evidence of the fact of his admission. The papers containing the fiat of the presiding judge, as aforesaid, were thereupon indorsed and filed among the records of the court as a part thereof, and marked, filed, as of the date of the respective application. Until 1873 these did not appear in the minutes of the court, and then only in the form of a brief reference. Yet they were judicially adjudged "records of the court" by Judge Freedman in a number of cases that came up for test in 1878, and the Judge said:

"Even if absence of an entry in the general minute book could be deemed a defect, it is one which is immaterial, and whose disregard is demanded by every consideration of public policy. Indeed it is one of the fundamental principles of the law that every court is the guardian of its own records and master of its own practice. (Broom's Leg. Max. 127.)

From this it is evident that the absence of any account of the naturalization of Mr. Cannon in the minutes of Court proceedings Dec. 7th, 1854, the date of his certificate, is not evidence that he is not a citizen. But on the contrary, the certificate showing on its face that he did appear in court with his witnesses on that day and date and comply with the law, and was duly admitted to citizenship, and that a book kept in the office of the Supreme Court in the custody of the Clerk thereof and handed down to his successors in office, contains a record of the same facts, of which indeed the certificate is but a duplicate, the evidence is sufficient to substantiate the fact that the gentleman was duly naturalized, and is therefore, and has been since December 7, 1854, a citizen of the United States. And this will apply equally to the case of others who, in good faith, and understanding that they had complied with the law, have appeared in Court and received their naturalization papers, the record of which was not kept in the minutes of Court proceedings, but in another form.

The reason why the book containing the record of naturalization is in the keeping of the Clerk of the Supreme Court, is doubtless because at the time when Mr. Cannon was naturalized, this city was in the First Judicial District, but the districts were changed, and so this and other books forming part of the records of the First District were deposited in the office of Clerk of the Supreme Court. It makes no difference to the fact or the legality of the record or certificate, whether this proceeding was regular or not.

We have taken up this subject again because it may affect other citizens besides our Delegate, and because we wished to throw light upon those points which have been surrounded with a cloud of sophistry, by the advocate of the person who represents the fraud perpetrated on the People of Utah Territory.

THE WHOLE QUESTION.

So far as received, our exchanges which refer editorially to the Delegate's certificate, fail to endorse the action of the Governor in certifying to a falsehood, and assuming the prerogatives of the Congress of the United States. Some of them, like their fellow anti-"Mormons" at the time of the cold-blooded murder of Joseph Smith, while they cannot applaud the deed, are glad it is done. Others, too just to rejoice over so plain a violation of law and the rights of a vast majority, while desirous of excluding a "Mormon" Delegate from the House of Representatives, yet condemn in vigorous language the usurping official who committed this high political crime, and then ran away from his post as if in fear of the consequences of his own iniquity.

But no one says that what he did was right. For if a government official in one place or calling may be allowed to trample on law and justice, and make himself superior to the popular vote and his own sworn duty, and is sustained in his nefarious course, a precedent is at once established which will be followed by other officials in other places, and the result may be imagined if not described.

The question is not whether the candidate having the highest number of votes is a citizen, eligible or ineligible for the position, qualified or disqualified by any act or failure to perform an act, worthy or unworthy of moral, secial or official recognition, but simply was he elected by the people? The Governor's official declaration is that George Q. Cannon received 18,568 votes and Allen G. Campbell 1,377 votes, and yet he gave the latter the certificate—and fled.

We ask our brothers of the press throughout the United States, no matter how much they may be opposed to our views and doings and those of the gentleman who has been elected Delegate from Utah, to pause and reflect before they utter a word that can be construed into an endorsement of the act of treachery and falsehood, by which about nineteen-twentieths of the people of a Territory of the United States have been defrauded of their political rights, and their ballots have been thrown aside as nothing in comparison to the will and wickedness of one individual.

Congress may decide on the qualifications of its members. Congress may refuse our Delegate a seat on good and sufficient grounds. But no Governor or other "one man power" in the Union has the right to constitute himself a Judge or a Congress, and pass upon a question reserved by the Constitution to the House of Representatives. This is the whole matter to be kept in view; religious, social or political questions have not the remotest legitimate bearing on the subject.

A SMALL OFFICIAL'S PETTINESS.

GOVERNOR NEIL of Idaho, with the spite and vindictiveness that indicate an infinitessimal soul, is revenging himself on the representatives of the people in the southern part of the Territory for voting against the printing of his abusive message, by vetoing every measure introduced by them into the Legislature. The Boise *Democrat* contains several brief but pungent and scathing articles in relation to the Governor's course. Among them are the following:

"By mistake a House memorial was taken to the executive department the other day, which was returned back with an elaborate veto. Gov. Neil probably thought it some dodge of the Mormons to get possession of the territorial arms, or something else bad, and he gave it his gubernatorial quietus."

"The Governor has vetoed every bill passed that has been introduced by the Oneida and Bear Lake delegations, and his trainers are essaying all manner of schemes to keep the legislature from passing over his head all future just bills that may be passed for the benefit of the citizens of those sections. This action of the Governor is in accordance with a long-matured plan, and shows that the ring knew their man when they selected the present executive. Having thus shown a disposition to attempt to use the legislature in carrying out spite work, it now remains for the members to give a proper rebuke to such unwarranted conduct."

"The governor, it is said, wants to quell the twin relic and make it vote right by force of arms. Fancy the commander-in-chief of the Idaho militia, Johnnie Neil, with a big yaller cinch about his waist, his trusty saber dangling, circular-saw spurs at his heels, accompanied by his staff (including the terrritorial printer and Judge Kelly) and surrounded by his Boise City Body Guard, charging over the ridge at the dismayed and fast fleeing Bear Lakers."

There is one check upon the petty tyranny of the Executive of Idaho. He is not empowered with the right of absolute veto like his Utah confrere. A two-thirds vote of the Legislature will annul his arbitrary dictum, and pass a bill over his veto. Whether there are Republicans enough in the Assembly to value the wishes of the people more than party proclivities, and join in a vote to neutralize the Republican Governor's edicts, remains to be seen; there are not enough Democrats without aid from their political opponents to accomplish this. A little time will tell.

AN ALLEGED "SURE CURE FOR DIPHTHERIA."

WE have received the following letter from the Bishop of South Jordan Ward in relation to a remedy for diphtheria, which was thus published in the Salt Lake *Herald* in December last:

HOLDEN, Millard Co., Utah,
December 21st, 1880.

Editors Herald:

I send you a sure cure for diphtheria, and if you will please publish it in the *Herald*, it may save the lives of thousands of children: It is as follows; Take two parts of saltpetre and one of sweet nitre; mix them in water, making a gargle of it, with which wash the neck or throat outside, and gargle the mouth inside, allowing a little to go down the throat; and if properly attended to it is said to never fail to cure. This receipt was sent by my son William Probert, who recently went on a mission to England, where he is now laboring in the Liverpool conference, and he states that the people there say it never fails to cure.

I remain, yours, etc.,
WM. PROBERT, Sen.

Brother Bills writes:

SOTTH JORDAN,
January 12th, 1881.

Editor Deseret News:

Two of my children have lately had the diphtheria; I used the remedy here described, and can say that it is as valuable as it is recommended. My neighbors also bear the same testimony who waited on my children, and hereafter it will be used for the above complaint when it makes its appearance in this Ward. One of my children was so badly afflicted that many thought it nearly equal to raising the dead to restore to health. But I will add that myself and family fasted and prayed for God's help, and to him we give the glory, for my children are restored to health. The complaint made its appearance in two or three other places in the Ward, but when the the above remedy was applied it gave way. The Ward is now clear of this dreadful complaint. We also used butter made very salty to rub on the parts afflicted and found it very good.

WM. A. BILLS.

CREATING RESPECT FOR THE LAW.

THE San Francisco *Post* thus concludes an article on the certificate outrage:

"It remains for Congress itself to assert its own dignity, and by refusing to seat the Mormon Apostle, show the deluded members of that church that henceforward they must conform to the law or cease to have any control in the politics of the Territory."

That is, that in order to make the "Mormons" conform to the law, Congress must "assert its own dignity" by violating the law. Because the "Mormons" believe in the rightfulness of a certain ceremony, which, though sanctioned by their Church, is forbidden by a Congressional statute, therefore Congres