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CHARLES W. PENROSE, EDITOR.

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LET THE WRONG BE REMEDIED.

The papers East have not yet done with their criticisms of Governor Murray and his action in the certificate fraud. The Washington correspondent of the New York *Mail* writes:

"The action of Governor Eli H. Murray, of Utah, in refusing to certify to the re-election of Cannon, is considered by the highest authorities as unjustifiable, and done without sanction of law. The general opinion here is that Cannon will retain his seat."

On this the *Mail* remarks editorially:

"Governor Murray is remembered in Washington as a very handsome, dashing man and as an ex-United States marshal of Kentucky. The time occupied by him in performing the duties of this office was not, however, a brilliant period in his history."

There is an interesting story connected with the period to which the *Mail* refers, which does not reflect any more honor on the Kentucky Marshal than the certificate infamy throws on the Governor. It is not pertinent to this case, however, and will do to keep for awhile.

The unaccountable and discordant union between Watterson, of the *Courier-Journal*, an "unterrified Bourbon" Democrat, and Murray, a radical or "stalwart" Republican with Campbell, a kind of political nondescript, hoisting for the time and purpose a faded sort of quasi Democratic flag, has caused many conjectures among people who are posted on live issues, and who appreciate the incongruity of these tri-une elements. The Chicago *Inter-Ocean*, a stalwart Republican journal, contains a dispatch which thus enlarges upon the secret cause of the unholy alliance briefly hinted at a short time ago:

Washington, 9.—According to a letter received by a gentleman in this city from a responsible person residing in Salt Lake, it appears that the action of Governor Murray, of Utah, in issuing a certificate of election as Delegate in Congress to Mr. Campbell, who received *only a few* hundred votes, instead of to Mr. Cannon, who was undoubtedly elected, was dictated by motives other than those which spring from public policy, or from a conscientious desire to discharge a public duty. It is alleged in this letter that Governor Murray had bought a large interest in the celebrated Moulton mine, in Montana, adjoining the Alice mine, which latter mine is developing very rich ore. It is further alleged that Governor Murray has sold a portion of his interest in the Moulton mine to Henry Watterson, and that Campbell has advanced $50,000 to build a mill for the working of the ores to be taken from the property. Mr. Watterson is now in Washington using his efforts to secure the confirmation of Stanley Matthews, and it is said he is also using his influence with the democrats in the House, to prejudice the case of Delegate Cannon. Mr. Campbell is a democrat, but the friends of Mr. Cannon allege that Mr. Watterson's particular interest in Mr. Campbell's case arises from the fact that he is associated with that gentleman and with Governor Murray in the development of the mine above named.

The Providence, (R. I.) *Star*, touching again on the certificate business credits the Deseret News with the ability to "use the English language vigorously," on the "presumptious action of Governor Murray in refusing to give Mr. Cannon the present Mormon Delegate in Congress the certificate of his re-election, to which he was clearly entitled." The *Star* also quotes from a sermon by President Taylor on the attitude of the nation toward the "Mormons," and closes with the following:

"It was a great outrage that he was deslaiming against, and one for which Gov. Murray ought to lose his official head. But we have expressed our opinion on this subject before, and we only wish to add that Mormonism will every year take deeper and deeper root in the soil of the Territories which lie between the Rocky and Sierra Nevada mountains, until public officers learn that it is their business to execute the laws and not to persecute the people they are sent to govern."

The general opinion on this subject is notable, when we consider that the papers which express it are opposed on principle to "Mormonism" and desire the suppression of its social system. Yet they utterly condemn the course of the Governor because it was a palpable violation of law and of established and undisputed political principles. It is claimed by some that there is a remedy for the wrong committed by the Governor, in the action that will be taken by Congress, the general opinion being expressed that Mr. Cannon will obtain the seat. But this is not a full remedy. Indeed in view of the purpose of the conspiracy it is no remedy at all. The schemers never expected, and do not now expect, that the seat will be obtained by the person to whom the certificate was fraudulently issued. They only plotted for the certificate and Campbell's temporary admission on the strength of the bogus document, calculating to stave off, as long as possible, the real issue before the Committee to whom, in the ordinary course of business, the contest will be referred.

This is the wrong that ought to be remedied. Hence the mandamus application. The wrong sought to be righted by the Courts is not likely to be remedied in Congress, therefore it should find a cure in the Courts. The permanent right to the seat cannot possibly be obtained for the holder of the bogus certificate. But by its aid he may be sworn in, and occupy the place, exercising its influence and drawing its emoluments, until the case can be decided on its merits; and this great wrong ought to have some remedy in law, seeing that the theory of laws and courts is that they are established in the interests of justice both to the indidual and to the community.

We will just repeat here what we have intimated before—simply to assure those who may be influenced by statements to the contrary—that when our Delegate's citizenship comes to be tested before a competent tribunal—which no Governor or other mere executive officer is or can be under our form of government—it will be found entirely without a flaw. There is not a fracture in it anywhere. The only reason why the proof of this has not been fully adduced in this affair is because it has not yet legally entered into the *merits* of the case, and has not yet been a proper subject of legal inquiry. Mr. Murray and others who take pains to misrepresent the facts, may talk as much as they please about it, they will only waste their breath and expose their ignorance and mendacity. Meanwhile let the struggle go on for the right, with the assurance that the press and the country, while hostile to our creed, will endorse and sustain the triumph of political justice and applaud the defeat of an utterly unprincipled conspiracy.

GONE FROM OUR GAZE.

On Monday, St. Valentine's day, the "Junction Publishing Association," of Ogden, issued its valedictory and ceased the publication of a paper which has been well known in many places outside of Utah, as well as throughout the entire Territory for more than a decade. The *Ogden Junction* was started on the 1st of January, 1870, gaining its singular but appropriate title from its publication at the junction of the great railroads, and soon made its mark in the field of Utah journalism. It was known everywhere as an outspoken and vigorous defender of the rights of The People After a little more than seven years existence under the original company, it passed into private hands and then under the control of a new company, chiefly composed of its actual printers, writers and publishers. The field of its operations having been narrowed by the establishment of other journalistic enterprises, it gradually became unremunerative, and finally the proprietors considered it wise to suspend. They make the following announcement:

"Those of our subscribers who have paid in advance for the *Junction* for any length of time, can by letting us know by letter or otherwise, obtain the Deseret News. If you are already a subscriber for the News, the amount due you from our office can be placed to your credit on said paper. Should you not desire the News, you can, by calling at our office and presenting your receipt, receive in cash, any amount due you. Those living at a distance may enclose their receipt in a letter, and address to us and the money will be forwarded to them."

The *Junction* office will close on the 1st of March, so all persons indebted to it should at once make settlement. The job office is to be continued. The *Junction* is to be succeeded by the Weber County *Herald*, with new type, presses and other material, and it is to be hoped that, while more pecuniarily successful, it will prove as consistent and able a supporter of truth, liberty and popular rights as the gallant, but now financially unfortunate, Ogden *Junction*.

PECULIAR PROCEEDINGS.

We presume nobody is surprised over the conclusion of the Keyser trial. Everybody may say, "I told you so." It was generally believed the jury would disagree. The defendant was convicted at the first trial on very direct and pointed evidence, and the same testimony was adduced again. But the jury was specially arranged, and the arrangement was so obviously favorable to the accused that conviction was not expected by anybody whose opinion we heard expressed. The exclusion of all "Mormon" jurors was a smart stroke of policy on the part of defendant's counsel, but its permission was, to say the least, a little peculiar.

Although the Church was the loser of the stolen cattle, yet it *was* not the prosecutor in this case. It was the People against Keyser. The Church, as a corporation had no pecuniary interest in the case, therefore the members of the Church said to be partners in the corporation had no such interest. The "Mormons" had no more interest in securing the ends of justice than any other portion of the public desiring the punishment of cattle thieves. It was not a civil suit to recover property or obtain damages. It was a public prosecution in which non-Mormons were interested, as members of the body politic, as much as "Mormons," and if the latter ought of right to be excluded from the jury, should not men of the same faith and nationality as Keyser, have also been excluded?

We do not think such a proceeding would have occurred in any part of the United States outside of Utah, nor in relation to any other citizens than "Mormons."

From the Daily of February 21.

THE MANDAMUS CASE.

This morning, at 10 o'clock, the case of The People *vs.* Acting-Governor Thomas, came up before Judge S. P. Twiss in chambers. The alternative writ of mandamus issued by Judge Hunter required the Acting-Governor to issue a certificate of election as Delegate to George Q. Cannon, or to appear and show cause. Judges Van Zile and Sutherland appeared for the Acting-Governor and Arthur Brown, Esq., for The People.

Judge Sutherland, in opening the argument on behalf of the respondent, said that, for the purpose of making the pleading in their case intelligible, he would read the alternative writ served. [Read the writ.] Continuing, he said, to that writ, they offered a demurrer as follow:—

In the District Court for the Third Judicial District of Utah Territory.

The People of the Territory of Utah *ex rel* Geo. Q. Cannon *vs.* Arthur L. Thomas Acting Gov'r. of Utah.

The respondent demurs to the alternative writ of mandate served on him in this action on the followin grounds:

1. That said writ does not state facts sufficient to constitute a cause of action, or sufficient facts to entitle the plaintiff to a peremptory writ of mandate.

2. The plaintiff has no legal capacity to sue the cause mentioned in said writ, but the action should be brought in the name of the real party in interest.

3. The said writ is uncertain in this, that it does not allege that at the time of the demand and of applying for said writ and the commencement of this action, Eli. H. Murray, the Governor of said Utah Territory, was absent therefrom, or had otherwise at that time vacated temporarily, or otherwise, the said office of Governor.

4. That this court has no jurisdiction of the person of the defendant and said official character, or the subject of the action.

Therefore, the respondent prays judgment of said writ and that the same may be quashed.

Sutherland & McBride,
Philip T. Van Zile,
Attorneys for Respondent.

Territory of Utah } ss
Salt Lake County. }

Arthur L. Thomas, the respondent, named in the foregoing demurrer being duly sworn, says: I have heard read the foregoing demurrer' and the same is not interposed for delay merely.

Arthur L. Thomas.

Sworn and subscribed before me this 21st day of February, A. D. 1881.

O. J. Averill, Clerk.
By H. G. McMillan,
Deputy Clerk.

The demurrer, he said, indicated in general terms the points which they intended to make against the issuing of this writ. The first point to which he would call attention was that the writ itself as served declared that Eli H. Murray was Governor of this Territory, and of that he would have his Honor judicially to take notice It would require no allegation of a political fact of that character; the court always took judicial notice of the heads of the different departments, and *especially* the chief of the different branches of the Government. His Honor would therefore take judicial notice that the respondent in this case was not the Governor of the Territory. By a provision of the laws of Congress, when a Governor went out of the Territory, or was sick, or upon his death before another appointment was made, or upon his vacating the office in any manner before another appointment was made, the Secretary of the Territory then performed the functions of the Governor.

[On this point Judge Sutherland read section 1843 of the Revised Statutes of the United States.]

Continuing he said: The point they made from this section was that this writ did not allege that when the demand was made upon the respondent on the 5th of the present month, and when this suit was brought—that there was such a vacancy in the office of the governor as entitling the secretary to perform any of the duties of the government. In other words, the plaintifis did not show by their writ that they had a right to apply to the respondent to perform the duties that that they asked this coercive process against him for. Suppose, said Judge Sutherland, they had taken out this writ against any other citizen, simply changing the title of the action from "Acting Governor of Utah" to that of citizen, the court would have to take judicial notice that another person occupied the position of Governor. There was not, however, an allegation in the whole of the alternate writ that Arthur L. Thomas is Acting Governor of Utah, and there was no allegation that at the time this writ was served upon the respondent to appear before the court there was any temporary or other vacancy of th office of Governor, so as to prevent Eli H. Murray, Governor of the Territory of Utah, from acting. That, he considered was fatal. They did not show a title to call upon the respondent; they did not show that any duty rested upon him. By the statute the writ of mandate might be issued by any court in this Territory except the justices to compel the performance of an act which the law specially enjoined as a duty. [On this subject Judge Sutherland referred to Hyde on extraordinary legal writs, sections 150 and 536.) As regards the contents of the alternative writ the general rule was that it should allege facts which went to constitute the duty. In this respect the plaintiffs had failed. They had not shown the facts which imposed upon this respondent the duty to act in the place of the Governor at the time they called upon him. His right to act in the place of the Governor was always temporary; he acted in another's place; and therefore, whenever they called upon him to act, the plaintiffs must be able to assert—and they must assert at that particular time—the facts which entitled him to act and required him to act; great strictness of statement was required. Judge Sutherland again quoted Hyde, page 538, to show that it was material that all the facts should be stated in the alternative writ, since it was from that source only that the respondent learned what he was required to do. On this subject he referred also to 51 of Illinois, to show firstly that plaintifis must show all the facts necessary to raise the duty which they sought to compel the respondent to perform, and secondly that this action had not been brought in the name of the proper plaintiff. The action had been brought under the code, and the code required all actions to be brought in the name of the real party interested. [Read section 4 of the code, and called attention to some decisions on the subject.]

The next point he thought was that the mandatory part of this writ required the performance of a duty which was discretionary and judiciary. It was generally held that the duty of a governor was regulated by statutes detailing his duties—the counting up of votes, etc.—and on ascertaining who had the largest number of votes, to grant a certificate accordingly. That was a ministerial duty. This was not such a case. There was not a statute either of Congress or of the Territory that directed how the Governor shall reach the conclusion as to who is elected Delegate to Congress. Sec. 1,862 of the Revised Statutes of the United States provided that every Territory shall have a right to send a delegate to the House of Representatives; that said delegate shall be elected by voters of the Territory *qualified to elect* members to the legislative assembly; and that the person having the greatest number of votes shall be declared by the Governor *duly elected*, and a certificate granted accordingly. Now, there were two things to be considered on this subject. The law declared firstly, that the delegate shall be elected by the voters of the Territory qualified to elect members, etc, and secondly, the person having the greatest number of votes, undoubtedly meaning the votes of qualified voters—should be declared duly elected. Now, there was no statute, general or local, that directed how the Governor shall ascertain either of those facts; there was no law that directed the Governor to act upon the returns of electing officers; there was no law that referred to any canvass of those votes except the statute he had quoted; the whole matter of canvassing the votes and ascertaining who is elected, devolved upon section 1862. If there was a local law that should exclude the votes themselves from the Governor's inspection, and require him to take as true the official statement of the judges of the election as to legal votes, he thought it would admit of a question whether that law would be valid as it would narrow the duties and functions of the Governor. By this act the Governor is required to ascertain who is elected by such qualified voters; but there was no local statute that assumed to do so; certainly section 1862 did not. It seemed to prescribed a method by which the election *shall be conducted*. The judge then referred to the act of 1853, which provided that the Governor *shall ascertain* which of the candidates claiming to be elected has received the largest number of votes, and claimed that the returns would not enable the Governor to arrive at that conclusion; but there was no requirement in the Act that the Governor should determine who is elected from the returns. The Governor in the performance of his duty acted judically; his acts were not solely ministerial. [Referred to decisions on that subject.] No court had a right to dictate to the Governor what decision he should make. The court, he contended, had no power in the matter. It had no power to coerce the Governor into a performance of his duties. He was responsible not to the court, but to the federal source from whence he received his appointment.

This finished Judge Sutherland'