

## LEGAL RULING.

In the case of J. King Robinson against G. S. L. City, for the ownership of land adjoining the Warm Springs, within the municipal boundary of the city, counsel for plaintiff disputed the validity of the City Charter, and the points raised were argued before the District Court of the 3d Judicial District, Chief Justice Titus presiding. Judge Titus gave the following ruling on the matter, for a copy of which we are indebted to his Honor:—

This is an action of ejectment, instituted July 21st 1866, by J. King Robinson, against James S. Brown, Henry Arnold and John Fraser, for a lot of land described in the complaint situate without the occupied limits of Great Salt Lake City, in the Territory of Utah. On the 23rd of August, 1866, the above named defendants, disclaimed all interest in the land described in the complaint, averred their occupancy under Great Salt Lake City and declined to defend. Whereupon Great Salt Lake City by its Chief Officer and Attorneys asked and was received to defend the case as parties of record. On the 21st of Sep. 1866, the said City by its Attorneys Stout, Snow, Pawling and Kendall, filed its answer denying the material averments of the complaint as filed in the case averring its lawful occupation of the premises; and on the 25th of the same month, the plaintiff filed his replication denying the legal existence of the defendant as a corporation.

The legal defect alleged in the plaintiff's replication is, that the Acts of the Legislature of the Territory of Utah, for 1859-60, containing the charter of the defendant, were never submitted to the President and Congress of the United States, as required by the 3 and 6 Sections of the Organic Act of the Territory of Utah.

In proof of this assertion the Journal of the House of Representatives of the United States for 1860-61, was produced, which appeared to contain on inspection, no minute of the receipt by that house of the laws of Utah for 1859-60.

It was insisted on behalf of the plaintiff that the transmission of the laws of Utah to the President and both houses of Congress as provided by the Organic Act, was absolutely essential to their validity, that the want of their submission to the House of Representatives, as thus shown by its journal, avoided the Charter of the defendant, Great Salt Lake City, which was one of the laws not thus submitted, left the said City without any corporate existence or capacity to defend the case, and that judgment ought therefore to be rendered for the plaintiff in the present case.

The paramount question thus presented for solution may be stated as follows:—Is the transmission of a law of Utah to the President and Congress of the United States any part of its essence? And this question may be resolved into two others, as follows:—Is the Legislative power of the Territory of Utah adequate to complete legislation? Is that, which results from an exercise of this power, without any further or other legislative action, a law?

The fourth section of the Organic Act of Utah, provides among other things: "That the legislative power and authority of the said Territory, shall be vested in the Governor and Legislative Assembly." The sixth Section of the same Act also provides among other things: "That the Legislative power of the said Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this Act." To the exercise of this power there are a few special limitations, as in reference to the primary disposal of the soil, taxation of the lands of non-residents, and the jurisdiction of the Supreme and District Courts. The Congressional grant of general power to the Legislative of Utah, as thus appears by its statement, is complete and limited only by the rightfulness of the subject. And this power which is thus diminished by the abstraction of but few subjects is entirely complete over all which remained.

An Act of the Legislature of Utah requires no further or other exercise of power to make it valid in binding.

Over our Territorial Acts, the Federal Government has always retained its right of disapproval. In the Organic Act of every Territory, it has been made requisite for some territorial officer, to transmit or submit the Legislative Acts of his Territory to one or more branches of the Federal Government. By the "Ordinance of 1787, for the Government of the Territory of the United States North West of the river Ohio," it was required that the Territorial Secretary, should transmit authentic copies of the (Territorial) Acts and proceedings every six months to the Secretary of Congress. This was of course under the Confederation. Congress however under our present Constitution by its "Act" of Aug. 7, 1789, "to provide for the Government," of the same Territory, made it obligatory on the Governor thereof, "to give such information and to make such communication to the President of the United States, as was required to be given and made under the Ordinance of 1787." It was then as it now is the duty of the President under Art. 2, Sec. 3, of the Constitution of the United States, to give to the Congress, any material information in his possession regarding the territories as well as other subjects of public interest. Territorial laws were thus transmitted indirectly to Congress through the President direct.

For many years territorial laws were made transmissible to the President alone. By the Act of 1833 organizing the Territory of Wisconsin, however, one copy of its laws was required to be sent to the President, and two copies to the Speaker of the House of Representatives of the United States, for the use of Congress, on or before the first of December in each year.

Such remained the practice under the Territorial Organic Acts, till the Act of Congress passed Aug. 14, 1848, for the Territorial Government of Oregon. By that and all Organic Territorial Acts since, one copy of the laws of each Territory is required to be transmitted to the President, two copies to the President of the Senate, and two copies to the Speaker of the House of Representatives, of the United States, on or before the first of December in each year.

After these territorial laws are thus transmitted to the executive and legislative branches of the Federal Government, no further or other legislative action is required to give them validity. They result full-formed and operative from the action of the Territorial Legislatures, and only "if" by Congress "disapproved (they) shall be null and of no effect."

It was for some time contended that this formula of disapproval made some positive act or recognition of Congress necessary to give validity to these Territorial Laws. Even yet there seems to be a vague impression that these laws possess only a qualified validity or efficiency until some positive action by the Federal Government itself.

By no rule of legal construction, however, was ever such conclusion justified. The Organic Act of the Territory of Utah declares concerning its laws that "if disapproved (they) shall be null and of no effect." Disapproval and annulment are here the equivalents. In legal construction, as in a mathematical axiom, if the same or equivalent expressions be added to the same or equivalents, the results will be equivalent. If therefore we add the expression not, to each member of the equivalent expression thus employed in the Organic Act of Utah, we have this resulting equivalent, "and if" not "disapproved shall" not "be null and of no effect." This expression thus resolved shows with demonstrative certainty, that no action is required by Congress to give validity to a territorial law of Utah.

Precedent concurs with construction to the same conclusion. American Insurance Co. v. Canter 1 Peters, 520; The United States v. The Miners' Bank of Dubuque, 12 Howard 1.

Territorial laws have an initial and temporary but complete operation before they reach the President and Congress, and afterwards till if ever disapproved. Such has always been their practical effect sustained as it thus is by construction and precedent. Territorial laws, therefore, result full-formed and complete from the legislation of the Territories.

Transmission of a law of Utah to the President and Congress is therefore a mere external requisite, and not an internal or constituent element of the law itself. One thing is never essential to any other thing, unless it is inherent in, and by such inference makes its nature wholly or partly what it is. Essence is some necessary quality of the thing in which it inheres, which being eliminated from the thing, by such elimination makes it something different in its nature from what it was. It may be added that the essence of any given thing never assumes such diversities of form and magnitude, as has this transmission of the laws of the Territories, to different departments of the Federal Government, by different territorial officers, at different times, under their various Organic Laws.

Transmission of a Utah law to the President and Congress is no part of its essence.

It is nothing more than notice to that Government, of what has been done by these Territorial Governments of Congressional creation. Barner v. Porter, 9 Howard, 235; Hunt v. Paloo, 4 Howard, 580. And this notice is, it is submitted, sufficient, wherever it fully informs Congress of what these territorial laws are.

Full literal notice under the organic law of Utah, is the transmission of one copy of its laws to the President, two to the Speaker of the House of Representatives, and two copies to the President of the Senate, of the United States, on or before the first of December of each year. This satisfies all the exigencies of the case.

Notice of the Utah laws directly to any one of these three elements of the Federal Government, would be indirect notice to all; for the President would communicate the requisite information of this territorial legislation to Congress, in the absence of any other channel, and either House of Congress, upon notice of anything in this territorial legislation, demanding rectification, would communicate it to the other, and ultimately to the President himself, in the form of a remedial bill for their joint action.

It was probably for this reason that partial notice, to the President alone for instance, was deemed sufficient in the earlier territorial organizations.

It is not necessary to say what would be the legal consequence, of omitting altogether to transmit the laws of the Territory of Utah to the President or either House of Congress. Such is not the case presented.

The allegation and the evidence are that no entry is found in the House Journal of 1860-61, of the receipt or submission of the Utah laws for 1859-60, which contain the charter of the defendant. The presumption is that public officers do their duty, whatever that is; Martin v. Mott, 12 Peters 33. This presumption exists in regard to the transmission of the laws of Utah to the President and Senate—either and much more both of which would satisfy the requisites of our Organic Act, by informing the Federal Government what those laws were and what if anything needed rectification. It is impossible to say that this presumption is overcome by showing the failure as in the present case of only one branch of a triple notice, when from anything that appears either or both the other branches or means of notice, might have succeeded and been effectual.

The rule of relative probabilities, *fortius presumptum esse contra partem*, does not lie against the Territory of Utah, for the Secretary, who if any one, must have caused the failure of notice to the Federal Government, by his omission to transmit the laws of Utah, was not of territorial appointment or control.

The presumptions of law and the probabilities of the case, combine in the controlling conclusion, that Congress directly or indirectly did receive the laws of Utah for 1859-60, containing the charter of the defendant, Great Salt Lake City, by means of the copy required by the Organic Act of the Territory to be sent to the President, or by means of the two copies required by the same act, to be sent to the Senate of the United States.

It is doubtless true that the law when once determined is to be enforced without regard to consequences. In the question presented, however, in which the law is more or less of circumstantial ascertainment, the damage which might result from leaving a City such as Great Salt Lake, filled with a population more or less discordant, without a Charter for its restraint, may and ought to be seriously considered. Consequences are always to be regarded in determining what the law is.

These consequential considerations, it has been maintained by some of the ablest jurists, are the very foundation of equitable jurisprudence, and of that large class of cases, which rest upon the maxim *communis error facit jus*. The laws of prescription and limitation owe their sanction a great measure, to a consideration of the injurious consequences, which would arise from denying their operative existence.

I am therefore unable to declare the Charter of Great Salt Lake City null and void, because there is no mention in the House Journal of 1860-61, of the Utah Legislative Acts for 1859-60, when such Charter was enacted.

Several subordinate and remote questions were presented in the present case. The disposition, however, which is thus made of this immediate and paramount one, renders their consideration not only unnecessary but supererogatory.

The contrary to the conclusion thus announced was urged for the plaintiff, by his Counsel, with marked ability and energy.

I am constrained, however, to overrule the plaintiff's replication and require him to take issue in the present case, upon its merits.

This opinion is thus submitted in writing that it may be reviewed and rectified by a higher tribunal, if erroneous.

Mrs. SMITH is prepared to supply ladies in the millinery and fancy goods line. She advertizes a complete assortment at moderate prices.

## HOME ITEMS.

SABBATH MEETINGS.—Elder A. M. Musser contrasted the unity which exists among the Latter-day Saints with the disunion, becoming every day more apparent, in the world. He spoke of the blessings of unity in political and social matters, as well as in religion, and pointed out some of the blessings that flow from living in accordance with the principles of the Gospel.

Elder G. B. Wallace treated on the laxity which some manifested with regard to their privileges in the Gospel, and urged increased righteousness and truthfulness.

Afternoon.

President B. Young occupied the time, pointing out the varied prejudices and traditions that exist among mankind, and instructing the people in charity of thought when judging of the acts of others, whose traditions may have taught them to look upon many things as correct and praiseworthy, which people educated in different traditions might view as wrong and sinful. The discourse was replete with valuable instructions and comforting teachings.

THEATRICAL.—On Tuesday evening the Angel of Midnight was presented. The piece is one of those kind of things that is great on tableaux, and terminates with a gorgeous apotheosis of the supposed embodiment of the angel of death. There is a strong attempt to mix up with it considerable of the German mysticism. The author makes the "Apostle of life" rather a small specimen of a great man, setting him on a heavy "tight," in which he gives chase in a rather undignified style to a pretty young lady, and then suddenly sobers him by a personal introduction to the "Angel." There is a good deal of romance about it; and various morals are sought to be interwoven with the incidents, with a view of showing that death is around continually, and often strikes the wicked in the apparent moment of triumph. Mrs. Irwin, played the Angel; Mr. Irwin, Paul; Mr. McKenzie, the Baron; Mr. Lindsay, the old Count; and Miss Adams, Marguerite. The characters were very creditably sustained.

In consequence of the severe indisposition of Mrs. Irwin, Advertising for a wife had to be postponed, and My Husband's Ghost was substituted, which was very well rendered, on the brief notice for getting it up.

On Thursday evening Schiller's drama of the Robbers was performed, Mr. Irwin sustaining the principal character, supported by Messrs. McKenzie, Lindsay, Margetts, Miss Adams and a full cast. Our theatrical reporter was unable to remain through the performance, but left as the curtain fell on the second act, when muskets were cracking like fury, and the audience were making strenuous efforts to drown the reports with applause.

Barney the Baron followed, in which Mr. Dunbar appeared as the itinerant tinker suddenly elevated to a German baronetcy. We understand that both the play and farce gave satisfaction.

On the evening of Saturday last The Marble Heart was performed, for the benefit of Mrs. Irwin. There was a very good house, although the weather had been so unfavorable. The piece is one that has been played several times here, and does not call for any lengthened notice or particular remarks now. Mr. J. T. Caine made his first appearance for ten months, in the character of Volage, and was greeted with a very warm reception. At the fall of the curtain Mr. Irwin appeared, in response to a call from the audience, tendered the thanks of himself and lady for the reception they had received, and announced that the management had re-engaged them for a limited number of nights.

The farce of Advertising for a Wife, written by Mr. E. L. Sloan, followed, being its first presentation here, and kept the house in a condition of rather immoderate laughter throughout. It answers the object in view admirably, abounding in fun, eccentric situations and comical business, with a moderate flow of wit. The characters were well sustained by Mr. Irwin as the would-be benedict, Mrs. Irwin as his portean lover, and Mr. Rainforth as the stupidly deaf Tim.

POLICE COURT.—On Monday afternoon, 15th inst., William Woolsey was brought before Alderman Clinton charged with stealing cattle, and bound over in \$500 to appear at the first regular sitting of the Probate Court.

On Tuesday afternoon, 16th, the police, under warrant, entered a drinking and gambling den, kept by Isaac B. Giles, over the Miner's store, and demolished his stock in trade, according to the requirements of the ordinance against gambling, and selling liquor without license.

In an adjoining room a gambler named John King was arrested while engaged in gambling, and was fined \$50 by his Worship.

GOT IN.—Captain Abner Lowry's train of 60 wagons and about 100 passengers got into the city on Monday, a little before noon. This is the last immigrant train of the season. They encountered some severe weather on the latter part of the trip; but the immigrants stood it very well. We are glad that this train has got in, and that all the immigration is safe in the Territory as early as it is. There was more mortality than ordinary in Cap. Lowry's train, in consequence of a malignant form of dysentery which afflicted many on the first part of the journey across the plains; but the deaths, we are happy to say, were not so numerous as was currently reported some time ago.

GENEROUS—VERY!—There is such an abundance of generosity running loose now-a-days that there is danger of somebody getting smothered with it. One way in which it is manifested is by aiding theatrical twinklers with the offer of "benefits"—that don't cost the generous souls who make the offer any more than the odd dollar for admission; and that only if the entertainment is sufficiently attractive to "draw them out." "You get the house, now, and we will tender you a benefit;" done up in the usual style, of course, with "appreciation of talents, offer you a benefit—name time and place agreeable—signed, &c., &c."—and then comes the dollar for a seat—if the bill pleases. Funny way of offering a substantial favor; inviting the "favorite" to provide the show while somebody else's purse strings must be drawn to pay for the occasion. Gentlemen, benefit-givers, let us drop you a hint: When you tender a benefit, just show your appreciation of the proposed benefactor by offering \$10 each for tickets for the entertainment—that expenses may be covered and the object of your overflowing kindness have a something substantial as the result of your offer. There would be some sense in that; and it looks more like business than the other way, which simply means that somebody else shall pay the piper while you dance to the music.

THE JUVENILE INSTRUCTOR.—By the last issue of this little periodical, we see that the Editor designs issuing weekly for a short time, to bring the numbers up to date before the close of the volume. City subscribers will receive their papers at appointed places in the various Wards on each Saturday evening or Sunday morning. We are pleased to learn that its subscription list keeps steadily increasing.

A BAD BIT.—There is a portion of the road, on 1st South St. east of the 11th Ward School-house that would be none the worse for a little attention on the part of somebody; especially now that we have a prospect of soft and slushy weather before many weeks pass by.

NEEDS GRADING.—There are some spots in the side walk on East Temple St., that could bear filling up and grading before winter sets in. It would be to the advantage of merchants doing business there to spend a little opposite their premises, where it is needed, and put the whole of the side walk in the same pleasant condition as opposite the Emporium and Exchange buildings. Messrs. Jennings and Godbe invite customers to pass into their establishments by the neat and well graded footpath before their doors.

SNOW-STORM.—There was quite a heavy deposit of snow on Friday night and Saturday morning in this valley and the mountains around. It looked like an early instalment of winter; but as the clouds cleared away afterwards there are hopes of a spell of fine weather yet, before the grim old monarch asserts his sway.

FROM BEAVER.—By an interesting communication from Beaver, we learn that there has been a plentiful harvest in that county this season, with better wheat than in many neighboring settlements, though it was thought by some at one time that but little if anything could be produced there for the sustenance of man. The weather was warm and dry, at date of writing—Oct. 7th—and threshing machines were busy. Considerable activity is manifested in pushing forward the meeting house in Beaver, and other public improvements, though heavy rains had injured adobe and brick making; and the demands made upon the energies of the people, during the summer, in guarding against Indian depredations, had been a weighty tax upon them. Travelers southward to Pahrangat look wistfully at the plentiful crops as they pass through the settlements. Do they ever consider the toil and labor that have been called into requisition before the soil brought forth the produce that excites envy in their minds? is a question that is naturally asked.

It is gratifying to learn good news of Beaver, and of every other place in "our mountain home." Write again, friend W.; we are always pleased to receive such items of news.

UTAH CO. MUSTER AND DRILL.—Major Gen. R. T. Burton, with Col. D. J. Ross and Major Wm. Calder, his aids, visited Provo, the latter part of last week, to "assist" in the muster and drill of the Utah Co. Militia, held at Camp Wells, under the command of Major Gen. A. Johnson. There was a large representation from the County, and the men were well armed and evinced a degree of proficiency in performing the required movements and evolutions, which reflected much credit on officers and men. A grand dress ball on Saturday evening terminated the proceedings, at which the officers from this county were invited guests, "and all went merry as a" &c. All highly creditable to Utah Co. and the officers of that Division of the Legion.

POLICE REPORT.—A "regenerator" who rejoices in the name of Tom Joyce blew off an extra amount of gas on Sunday night, and was anxious to put some non-"regenerator" in a condition for a wooden shirt. On Monday morning Alderman Clinton demanded \$10 for the explosion. If the city becomes too hot for the scamp perhaps he had better return to Mant; he was wanted there badly, when he slid off rather suddenly, his "regenerative" practices involving consequences that made San Peter a little too warm for him.