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GRAVE ERRORS OF THE U.S. SUPREME COURT.

THAT distinguished jurist, Judge Edward G. Loring, has had the temerity to oppose two recent decisions of the Supreme Court of the United States, notwithstanding the dictum of the so-called "Democratic Convention" of this Territory, that "all attempts to call in question or defeat decisions of courts of last resort are factious and revolutionary." Probably Judge Loring never heard of the singular kind of Democrats who enunciated that sentiment, or he might have hesitated before publishing his article in the *North American Review*.

That magazine for August, contains a very strong paper from Judge Loring's pen, entitled "The Drift Toward Centralization." It discusses the rulings of the Supreme Court of the United States in the case of Juillard vs. Greenman, and in that of the United States vs. Lee. By the first, the government may create whatever money it may require to maintain itself in power. By the other, if the government unlawfully take the property of the citizen he has no legal means for its revovery. Both of these conclusions are shown to be contrary to the plainest fundamental principles of our form of government.

In the legal tender decision the majority of the Court held that Congress has the power to make the Treasury notes of the United States lawful tender in the payment of private debts *i. e.* legal money of the country. And they cite the Constitutional provisions that Congress may "borrow money," "pay debts," "lay and collect taxes" and "coin money." Each of these provisions is taken up by Judge Loring, and it is clearly demonstrated that they do not apply to the case in question. To "borrow money" is not to make money, it is only to obtain it from some one else; to "pay debts" only authorizes the application of money, not its manufacfacture; to "lay and collect taxes" merely involves assessment and collection of money due from the people. The phrase to "coin money" carries with it a definite meaning, and plainly signifies making money of coin and nothing further. On this point Judge Loring says:

"When the Constitution was formed, the people of the United States held all sovereign powers, and among them the power to say of what the money of the country should consist. They could have conferred this power as they held it, and vested it in its entirety in Congress. But this they did not do, and instead they conferred on Congress the power 'to coin money,' which is the only power to make money specified in the Constitution. Here the power and the means for executing it are both specified in the same word, "coin." This manifests the intent that the power and the means of executing it should be inseparable. To separate them by substituting other means, as paper for coin, would not, in the words of Chief Justice Marshall, consist with the spirit and letter of the Constitution" (4 W. 421), but would violate both. All of a power that can be conveyed is the use of it; and the specification of one use precludes the implication of any other. *Expressum facit cessare tacitum.*

From the nature of powers, every grant of a specified power is a limitation of that power, in the same way and for the same reason that a grant of an estate is, in the accurate language of the common law, a limitation of that estate. And every limitation of a power is a prohibition to transcend it; for, if it had not that effect, it would not be a limitation.

This is sound constitutional and democratic doctrine. The attempt to vest in the national government powers that are reserved to the people, which is being repeatedly made, and favored by a Republican Supreme Court, is dangerous to the institutions of the country. And it is the privilege of every patriot to expose and oppose the heresy as far as his light and opportunities extend. It makes no difference who sustains the wrong. The supreme Court of the United States is no more above criticism than any other body deriving its powers from the people. It is not only the right but the duty of enlightened men to "call in question" decisions of that Court which are revolutionary in their tendency or subversive of the rights of the people.

Judge Loring shows the difference between the governments of Europe which have power to issue bills of credit and make them by legislation a legal tender, and the Congress of the United States. The former are sovereign powers. Congress is no more sovereign than the judicial or executive branch of our Government. Parliament may do whatever it is not prohibited from doing, while Congress can only do that which it is specifically authorized to do; it has no sovereignty. The Constitution did not create ,,a National Sovereignty," as the Court claims, but the National Sovereignty—the People of the United States, created the Constitution, conferred certain specified powers on the national government, and retained the rest for the individual States or the still sovereign people. The drift toward centralization is to be resisted, no matter from what direction it may come, because it is calculated to destroy the very foundations of the citadel of liberty erected by the fathers of our country.

We hear much of the "incidental powers" of the government. Chief Justice Marshall has enunciated the true principle, which has come to be generally admitted, that: "This government is one of enumerated powers." Each of these enumerated powers is distinct and independent and, as the same great authority has declared, "cannot be implied as incidental to other powers, or used as a means of executing them." Such "incidental powers" as are vested in the government are merely the means for executing the enumerated powers. They do not go beyond. If Congress can add to its powers one that is not enumerated, it can add any number, and the enumeration or specification would thus be in vain, and our government would cease to be one of enumerated powers. The limitation must be complete and absolute or it would cease to exist.

These principles are of great importance, to the people of the Territories particularly, because Congress has assumed so much in relation to them for which no warrant can be found in the Constitution. And the Supreme Court has aided in the unlawful assumption of the National Legislature, by its loose opinions and unsound reasonings. These all tend in the direction of that centralization which is rightly viewed by thoughtful people as subversive of the system which the Constitution vitalizes and sustains.

In the other case decided by the Supreme Court, the ownership of the Arlington estate was decided. But the principle involved was something vastly higher than mere property value. It was the sovereignty question again. On this point Judge Loring says:

"In this country we have no personal sovereign, but instead, a supreme authority vested in the people of the United States. This authority is impersonal, and incapable of personal representation. Its will is declared only by the law. Hence the phrase and the fact that ours is a government of law. And as no one can be the agent of the law for anything unlawful, it follows that the sovereign, the people of the United States, cannot be a party to any transaction by the illegal act of any of their officers. So that any violation of law by an officer is his unauthorized and unofficial act, for which he is liable individually.

This is solid democratic doctrine and is irrefutable, the opinion of the majority of the Supreme Court of the United States to the contrary notwithstanding. There were four dissenting judges against the five who formulated the decision, and this, as Judge Long says, "brings uncertainty into the future." And it also shows that decisions by the court of last resort, although final in legal practice, are not infallible nor beyond reconsideration by the court itself. And everybody in the land has the right to criticise such Opinions, show their error, and expose their inconsistency with that instrument which is as binding upon the highest court as upon the humblest citizen.

A "GENTILE'S" OPINION.

FOLLOWING is a copy of a letter written by a gentleman from the East who has been spending a little time in this city investigating "Mormonism," and finding out what he could about the "Mormons." Unlike many inquiring tourists he has not confined his inquiries to the enemies of the people about whose faith and doings he desired information.

SALT LAKE CITY, Utah,
July 23d, 1884.

Mr. S. H. Shroyer, Cambridge, Ohio:

Dear Sir—As you are thinking of changing your location I desire very much before you make definite arrangements that you investigate this people. This I feel persuaded you can do best by coming to this Territory and forming their personal acquaintance. You can never spend your time more profitably, nor your money to a better advantage. I am well aware of the fearful prejudice that exist against them, yet I believe they are the best people to-day on the face of God's earth. Could you have spent yesterday at American Fork, a settlement distant about forty miles south of this city, you would, I feel assured, have had all predjudice (if any exists) removed from your mind,

The Utah Central ran an excursion to that place, from Salt Lake City for the entertainment of the Old folks, they hauled thirteen passenger cars loaded with the aged pioneers of the Latter-day Saints. All over 70 years of age had free tickets, while those over 60 and under 70 paid $1, none less than 60 taken except to take care of aged and infirm. On arrival at American Fork we were met by over one hundred wagons, driven by farmers, who hauled the Old folks to a beautiful grove of cotton wood, about ¾ of a mile from the station, where we found seats prepared, facing a large stand for the speaker; also a feast for all, consisting of cake, pies, bread, meat, butter, tea, in fact everything that could be desired. After all had satisfied their appetites speaking, singing, music by band and dancing were in order, but not without first returning thanks to Almighty God for his kind care and protection in their trials and privations in finding a place where they could worship Him according to the dictates of conscience.

Could you have taken those old people by the hand, and looked in their honest wrinkled faces, and heard them tell what they had passed through, and were yet willing to suffer even death itself if necessary, and this too while standing on the edge with one foot in the grave, you could never again doubt their honesty. I shall never forget this day while life nor eternity last. I felt that I was associating with a far better people than I had ever before met. I find here a people without many of the advantages of education, yet the most intelligent of any I have ever known. They are, from the President down to the poorest member, all working in one common cause, viz., the building up of Christ's kingdom in these latter-days. I cannot see how it is possible for any honest man to abuse and misrepresent this people after having given the matter careful investigation, and surely no well disposed persons would do so without first investigating for themselves.

The barren waste in the centre of the Great American Desert of 40 years ago is now dotted over with happy homes. The soil is the most productive I have ever known, while Salt Lake City is the handsomest on this continent, the streets being eight rods wide, with fine shade trees on either side, while a stream of pure mountain water runs swiftly at the base of the shade trees, thus keeping them in a thrifty condition. The weather has been quite warm since my arrival, two weeks ago to-night, yet the nights are always cool and pleasant. With much respect for yourself and family, I remain as ever,

Yours truly,
I. D. HAINES.

THE LAWS AND THE COMMISSIONERS.

WE publish, in another column, the opinion of District Attorney Dickson on the questions propounded to the Utah Commission by Counsel for the People's Party. We have published the brief presented by the latter through F. S. Richards, Esq., and also the reply of Commissioners Ramsey and Carlton. We will now make a few remarks on the Attorney's opinion.

The answer of MR. Dickson must not be viewed as an authoritative document. It is not a judicial decision, it is simply a lawyer's opinion. It is valuable therefore only so far as it is correct, and then but as the view of an official who is supposed to be on the Federal side of an argument in which Federal officials are against the People of the Territory. It has the merit of conciseness and perspicuity. It deals with the two questions at issue in straightforward and manly style. An ordinary mind can understand his conclusions and also the reasons he advances for them. He does not resort to casuistry nor attempt to confuse by ambiguous language.

Mr. Dickson concedes that the presence on a ballot of the names of officers not to be voted for, does not and cannot nullify or vitiate the ballot so far as it names officers that *are* to be voted for. This is the position we took last year when the Commissioners decided otherwise and issued their order preventing the counting of such ballots, and as we have all along maintained. It is an accord with legal precedent and harmonious with plain common sense.

On the question of the election of certain Territorial officers, Mr. Dickson opposes the argument of Counsel for the People's Party. He contends that the Territorial officers are not elective, but must be filled by the appointment of the Governor with the Legislative Council. There is nothing new in this. It has been argued many times. Mr. Dickson relies, for his opinion, entirely on the Seventh Section of the Organic Act. Lawyers differ in their constructions of the clause upon which he depends, and although the Supreme Court of the United States has not considered the question in dispute directly, yet it has indirectly pronounced against Mr. Dickson's interpretation. All this and other similar arguments have been set forth in the brief of Counsel for the People's Party, as well as in numerous articles in this paper, and may be summarized as follows:

Different opinions existing as to the exact meaning of the clause in the Organic Act relating to other offices than district, county and precinct offices, and the Legislature being endowed with power over all rightful subjects of legislation except certain specified and enumerated subjects, among which those offices are not mentioned, the Legislature, after creating certain Territorial offices, provided for the means of filling them, according to a principle generally acknowledged—that the power which creates an office may provide for the manner of filling it. The laws providing for filling these offices created by the Legislature were duly signed by the respective Governors in office at the time, and have been actually in force for many years. Congress has not disapproved of them. The officers elected under them have acted in their several capacities, The Supreme Court of the United States has sustained some of them in their offices after the very question now in dispute was sprung as an objection. The clause in the Organic Act, although not the direct subject before the Court, was cited, and the Court ruled against the view of it taken by those who cited it, which is the same view now taken by Mr. Dickson, and as he admits, the Court plainly stated it "did not think the objection sound." The Court also gave its opinion that the Acts of the Legislature claimed to be in conflict with the Organic Act, had received "the implied sanction of Congress" and were therefore valid.

And the Court further laid down the principle upon which the powers of Territorial Legislatures must be construed, namely, the theory of "leaving to the inhabitants all the powers of self-government consistent with the supremacy of national authority and certain fundamental principles established by Congress."

But supposing for argument's sake that Mr. Dickson's opinion is correct, and that therefore the views of the Utah Commissioners are sustained by the views of the District Attorney; what of it? What does it all amount to? Simply that the ideas of these gentlemen coincide, that is all. Neither the Commission nor the Attorney is clothed with judicial power. Their opinion is *but* an opinion. It has no more lawful effect upon an election than the united views of any other six persons of equal intelligence and information. The Commissioners, if assisted by a dozen or any number of District Attorneys, have no lawful authority to decide upon the validity of a law. Their powers are clearly and sharply defined in Section Nine of the Edmunds Act. There is no other statute or part of a statute that relates to their authority. At the election in August they have no powers whatever.

It is not true that they have "the control of elections in this Territory." The Edmunds Act so far as this election is concerned, simply gives the Commissioners power to appoint "proper persons" to do all things in regard to elections that the election and registration officers used to perform who were elected by the people. The registration officer now gives notice of the election instead of the County Clerk. He has no more right to judge who is to be elected than the County Clerk had. Where did the Clerk obtain his information about the officers to be elected? From the laws of the Territory. No man or set of men had the right to forbid him to make out the notice required by law. No man or set of men now have the right to forbid the registration officer to do so. He is required by law to give notice of an election for those offices which the laws make elective. Among them are certain Territorial offices. If the County Clerk had given the notice, they would have been included. Clearly they ought to be included now.

But the Commissioners said they were not to be voted for. Exactly. And that is where they put their foot in it. They had no authority to do anything about it. If they had, please point out the clause in the law that gave them the power. It cannot be found. They had no more right to pronounce upon it than had a dry goods firm or a quintette of farmers or mechanics.

It may be said the Commissioners believe the laws for the election of Territorial officers are void. We do not dispute that. But we do dispute their right to decide the question. We say this is a matter for the courts to settle, not the Commissioners. We say they have no right to pronounce upon it at all. They have neither the right to decide whether the local laws are valid or to instruct the Registration Officer as to their validity, and we challenge proof to the contrary. We say they have no lawful powers but those conferred upon them in Section Nine of the Edmunds Act, and neither Attorney Dickson nor any other legal light can show up the least color of judicial authority in that section. The gentleman has not pretended to do so. He has prudently confined himself to the two questions propounded to him. And even if his views are entirely correct, the Commissioners remain where they were; they have assumed a position for which there is not a line of law or a shadow of authority.

It may be asked, why then pay any attention to them? The answer is, the election officers receive their appointment from the Commissioners and will be guided by their instructions, law or no law, and The People are at present left to a certain extent powerless. Time, determination and the Courts will no doubt put these crooked matters straight. Meanwhile, The People should take a wise course, be ready to perform their duty as citizens, keep up the unity that now prevails, be ready to contend lawfully for their rights and always go to the polls on election days to vote for such officers as are nominated on the People's Ticket.

A REPLY THAT IS NOT AN ANSWER.

IN response to the brief of counsel for the People's Party, submitted to the Utah Commission, in reference to the election of Territorial officers, which we published in full in the NEWS, the following was given this morning:

OFFICE OF THE UTAH COMMISSION,
SALT LAKE CITY, Utah,
July 29, 1884.

Hon. Franklin S. Richards, Attorney at Law.

Sir—In answer to your inquiry concerning the August election, we have to say that, in our opinion, there is nothing in the laws of Utah, nor in the Rules and Regulations prescribed by the Commission for elections in the year 1884, that would authorize the rejection or throwing out of ballots by judges of election, or by the canvassers merely because they have printed thereon the names of officers not to be elected, in addition to those that are to be elected; that is to say, we hold that the valid part of a ticket will not be vitiated by surplusage.

In regard to the question whether certain Territorial officers are to be elected by the people or appointed by the Governor with the consent of the Legislative Council, we adhere to the opinion promulgated by the Commission on the 13th of June, 1883.

Yours respectfully,
ALEX. RAMSEY,
A. B. CARLTON.

This reply virtually leaves the difficulty where it stood before. The gentlemen who sign it admit the error of the ruling which forbids the casting of the ballots containing the names of officers whom they say are not to be voted for, but the ruling still stands, unless it be argued that the order of 1883 is not in force in 1884. It will doubtless be necessary to obtain the assent of one more member of the Commission to rescind the former Order, and no other Commissioners are here at present.

The direct questions asked of the Commissioners were put in this language:

So far as the coming election is concerned, THE PRACTICAL QUESTION IS, MAY THE ELECTORS' VOTE FOR TERRITORIAL OFFICERS, *and shall the ballots be counted so as to preserve evidence of the vote?*

Neither of these questions is answered in the reply of the Commissioners. It is merely an opinion which does not reach the desired object. Some definite answer is wanted before the election. Will the Commissioners respond so that the voters may know for certain what to do on *Monday* next?

DISTRICT ATTORNEY DICKSON'S OPINION.

ARE TERRITORIAL OFFICERS ELECTIVE? SHOULD BALLOTS WITH "SURPLUSAGE" BE COUNTED?

To the Utah Commission:

On the 28th inst., your honorable body submitted for my opinion the two following questions:

First—Are the offices of Territorial Treasurer, Auditor of Public Accounts, Superintendent of District Schools and Commissioners to Locate University Lands, to be filled by election by the people, or should the Governor nominate, and by and with the advice of the Legislative Council, appoint thereto?

Second—If not elective, should the ballot of any elector cast at the general election for county and precinct offices be rejected and held invalid *in toto* because it contains, besides the names of candidates for such county and precinct offices, names of persons to fill said Territorial offices?

The answer to the first question turns upon the proper interpretation of the Organic Act, the language of which is, to my mind, so plain as to leave no room for construction. That act provides for the election by the people of the members of the Legislative Assembly, and for the appointment by the President of a Governor, Secretary, Chief Justice, and Associate Justices, District Attorney and U. S. Marshal; it also provides that all township, district and county officers not therein otherwise provided for shall be appointed or elected, as the case may be, in such manner as may be provided by the Governor and Legislative Assembly of the Territory, and further that "the Governor shall nominate, and by and with the advice of the Legislative Council, appoint all officers not herein otherwise provided for."

The office of Territorial Auditor, for instance, is not provided for in the Organic Act, neither is it a township, district or county office; under the plain letter of the act, then, it is to be filled by appointment of the Governor, by and with the advice and consent of the Legislative Council.

It is often urged that inasmuch as the Territorial Legislature provided so long ago as 1852 that certain of these offices should be filled by joint vote of the Legislative Assembly and subsequently that they should be filled by election by the people, and inasmuch as these provisions of the Territorial statutes have always been acted upon as valid, without any protest on the part of Congress, they have received the approval of Congress by implica-