

RULING OF THE ATTORNEY GENERAL ON TERRITORIAL OFFICES.

It is generally understood by the public of this Territory that there has been for years past a conflict of opinion as to whether certain of the Territorial officers who have been for almost thirty years elected by the people were properly elective or appointive. Governor Murray has claimed that the 7th Section of the Organic Act authorized him to appoint them, inasmuch as it says: "He shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for," while others claimed that the Territorial statutes providing for the election of these officers by the people were valid. The Utah Commissioners (who of course have no more authority in the matter than so many private citizens) also ruled in favor of the Governor's views, and they having controlled the elections, the people were prevented from electing these officers as they had formerly done. The Governor presumed to appoint men to fill these offices, without, however, asking the advice or consent of the Legislative Council, but as the Legislature failed to ratify his nominations and the parties filling these offices, and who had been elected so to do until their successors in office were elected and qualified, refused to give them up to the Governor's appointees, they remain as they were. It will be seen by what follows that three of the Utah Commissioners have made application through the Secretary of the Interior for a ruling on this question from the Department of Justice in Washington and that Attorney General Garland has decided that the offices of the Territorial Superintendent of District Schools, Auditor of Public Accounts and Territorial Treasurer should be filled by nomination of the Governor "by and with the advice and consent of the Legislative Council," as the Organic Act provides, and that the Territorial statutes providing for the election of these officers by the people are in conflict with it and, therefore, not valid.

It will now be seen whether the Governor will nominate such men to fill these offices as the Legislative Council can endorse, for should he fail to do so, the present incumbents will certainly continue to hold over.

Following is the correspondence referred to:

LETTER FROM THE COMMISSION.
OFFICE OF THE UTAH COMMISSION,
SALT LAKE CITY, May 14, 1885.

Sir.—For several years it has been a disputed question whether certain Territorial officers in Utah are to be appointed by the Governor, with the assent of the Legislative Council, under the organic act of September 9, 1850, (Section 7), or to be chosen by the people at their general elections under certain acts of the Legislative Assembly.

The officers referred to are Territorial Superintendent of District School, Territorial Auditor of Public Accounts, Territorial Treasurer and Commissioner to locate University Lands.

In preparing for the general election to be held in August of this year, it is important for us, as well as the election officers appointed by us under the "Edmunds Act," to have this question authoritatively settled: and we therefore address you this communication with the request that the question may be referred to the Honorable Attorney-General of the United States.

The Governor for some years past has nominated these officers to the Legislative Council, and they refusing to recognize his power of appointment, decline to give their assent, upon the alleged ground that such officers should be elected by the people at their general election, under the Territorial statutes.

Our attention having been more than once called to this question, we concluded (with considerable doubt and hesitation) that the said officers are to be appointed by the Governor.

In order to facilitate the examination by the Attorney-General, we refer to the following statutes and authorities pro and con:

(1)

IN FAVOR OF ELECTION BY THE PEOPLE.

Compiled Laws of Utah, Sec. 44, page 90.

Chapter 11, Sec. 4, Session L. L. of Utah, 1878, page 27.

Compiled Laws of Utah, Sec. 602, page 247.

Chapter 19, Sec. 14, page 31 of Session Laws of Utah, A. D. 1880. [The language of this section (14) is identical with that of Sec. 602, supra.]

Act of Congress of February 21, 1855, page 611, Vol. 10, U. S. Statutes at Large.

Compiled Laws of Utah, [Sec. 586, page 241.]

Sec. 6 of Organic Act, Compiled L. L. of Utah, pages 30-38.

Sec. 1851 Compiled L. L. of Utah, 38.

(2)

IN FAVOR OF APPOINTMENT BY THE GOVERNOR.

Sec. 7 of Organic Act, Compiled Laws of Utah, page 30.

Sec. 1857 Compiled Laws of Utah, page 39.

[The Compiled Laws of Utah, A. D.

1876, and the Session Acts of Utah, 1878, are in the office of the Attorney-General, left there some months ago by Secretary Thomas.]

Those who maintain the validity of the Territorial Acts rely upon a statement made by the Chief Justice in the case of Clinton vs. Englebrecht, 13 Wallace, which is found on page 446, second paragraph from the top. *Per contra*, it is claimed by the other side that the presumption of approval by Congress of a Territorial Act, by reason of non-action and lapse of time, does not prevail in case of a direct conflict between the act of Congress and the act of the Territorial Legislative Assembly.

It should be added that the office of Commissioner to Locate the University Lands appears to stand on a different footing from the others, by reason of the fact that the act of Congress—referred to—was approved in 1855, five years after the date of the Organic Act.

We have thus endeavored to state the question fully and impartially, and we respectfully request an early opinion from the Attorney General.

Very respectfully yours,
A. B. CARLTON,
G. L. GODFREY,
R. J. PETTIGREW.

To the Honorable the Secretary of the Interior, Washington, D. C.

LETTER FROM THE ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
Washington, June 5, 1885.

L. Q. C. Lamar, Secretary of the Interior:

Sir.—At the instance of the Utah Commission the Honorable (H. L. Muldrow acting) Secretary of the Interior in a letter dated the 22nd ultimo, requested my opinion upon the following question: "Whether certain Territorial officers in Utah, namely, Superintendent of District Schools, Auditor of Public Accounts, Treasurer and Commissioners to Locate University Lands, should be appointed by the Governor, with the assent of the Legislative Council, or chosen by the people at their general elections."

For convenience, so much of the question as relates to the Commissioners will be considered separately, as the appointment or election of those officers appears to be controlled by a provision not applicable to the others.

Upon examination of the statutes enacted by the Territorial Legislature, it appears that the Superintendent, Auditor and Treasurer are thereby required to be elected biennially at the general election by the qualified voters of the Territory. (See Comp. Laws of Utah, 1876, p. 247; act of Feb. 22, 1878, chap. 11, laws of 23d session, p. 27.)

The Organic Law, however, (see Section 7 of the Act of Congress of Sept. 9, 1850, Chap. 51) declares 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." And as the three Territorial officers last mentioned are not therein "otherwise provided for," a direct conflict manifestly exists between the statutes of the Territorial Legislature above referred to and the Organic Law.

The Organic Law of a Territory takes the place of a Constitution as the fundamental law of the local government. It is obligatory on and binds the Territorial authorities. (Nat. Bank vs. County of Yankton, 101 U. S., 129.) Any act of the Territorial Legislature inconsistent therewith must be held void. (Ferris vs. Higley, 20 Wall. 375.) Congress may, undoubtedly, make a void act of the Territorial Legislature valid, and a valid act void. (101 U. S. Supra.) But, for the exercise of this power, some legislative act on its part, having that effect would be necessary. Certainly nothing can be implied in favor of the validity of a Territorial statute which conflicts with an express provision of the Organic Law of the Territory, from the mere fact that Congress has not disapproved it.

It follows that the statutes of Utah, in so far as they require the Superintendent of District Schools, Auditor of Public Accounts and Treasurer of the Territory to be elected, being contrary to the provision of the organic law hereinbefore mentioned, are a nullity, and that those offices should be appointed in conformity to that provision.

A similar conclusion was reached by the Supreme Court of that Territory in regard to the Territorial Marshal, who, by an act of the Legislature of the Territory, was required to be elected by a joint vote of both Houses thereof. The Court held the act to be inconsistent with the provision of the organic law above adverted to, and therefore void. (See *ex parte*, Duncan, etc., 1 Utah Rep. 81.)

In regard to the Commissioners, these officers are by the Territorial statutes required to be elected annually by the qualified voters at the general election. (Com. Laws of Utah, 1876, p. 241.)

By the 3d section of the Act of Congress of February 21, 1855, chap. 117, a certain quantity of land was reserved for the establishment of a university, "to be selected under the direction of the legislature," etc. The legislature of the Territory provided for the selection of this land by creating a board of commissioners, to consist of three men, elected as above, and devolving upon such board the duty of selecting the land. I am of the opinion that the Territorial legislature, by virtue of said act, was invested with full power over the selection of the land, including the establishment of the agency by which such selection was to be accom-

plished. It was at liberty to devolve the duty of selecting on officers already created, or authorize the appointment of persons for that purpose by such officers, or by the Governor, or otherwise provide the instrumentality for carrying its will upon the subject into effect.

The commissioners in question are not therefore, to be regarded as within the operation of the above mentioned provision of the organic law; and their election in the manner prescribed by the Territorial statute is proper. I am, sir, very respectfully,

A. H. GARLAND,
Attorney General.

CORRESPONDENCE.

JOTTINGS FROM MINNESOTA.

Proselyting in the Northwestern States—What a Field for Moral Reformers—The Great Cities of the Nation Present.

MINNEAPOLIS, Minn.,
July 3, 1885.

Editor Deseret News:

On the 23d and 24th of May we held our conference in this city, and had a very enjoyable time although but few strangers attended our meetings. The

REPORT OF THE ELDERS

showed that since our Conference last October 192 public meetings had been held, 28 persons baptized and 21 children blessed. Good instructions were given by our esteemed President William M. Palmer and other Elders. We have now 23 Elders in the field; that is, in this conference. Fifteen labored here through the winter, but owing to the extreme cold weather, which is a characteristic of the winters in Minnesota and the prejudice of the people we have held comparatively few public meetings, yet there has been a great amount of fireside preaching done and the printed word of God has been circulated very widely.

We find the DESERET NEWS and other home papers most powerful helps to disabuse the minds of the people, for many will eagerly read them that would not read a tract or listen to the verbal testimony of a servant of God. It is only a pity that our brethren at home are so slow in sending their papers to us after they have read them. The Elders in this Conference are now all in their different fields in Iowa, Minnesota, Wisconsin and Dakota. They feel excellent, and are willing to do all they can for the spread of truth. Nine baptisms have already been reported since conference. My partner and I have been appointed as general traveling Elders, with the privilege of going wherever we deem best (in the mission). After having made it a matter of prayer for several weeks, while traveling in this neighborhood, we have now concluded to go into Dakota to

-BREAK SOME NEW GROUND.

The doings of the officials in Utah are looked upon by different people in different ways. The liberal thinking people look upon it as an outrage and disgrace to justice. I took the liberty to lay before a well educated and influential gentleman, well acquainted with jurisprudence, the proceedings in the cases of President A. M. Cannon and Brother Musser and he declared them an outrage and said that such doings would not be tolerated anywhere else. While this is the feeling of many right-minded, liberal persons, who, though not professors of religion, are willing that all should enjoy the right guaranteed unto them by the glorious constitution of our country, they are many, yes the large majority, and I am sorry to say the most religious, the most pious (which by no means implies the most righteous) who applaud and favor the illegal and disgraceful proceedings of the crusaders for the simple reason that the victims are "Mormons." Yet even the latter, and in fact, all scorn and denounce the few who have yielded and have, to save themselves, promised to cast adrift their wives and children—who should be dearer to them than life itself. We have yet to hear the first word spoken in favor of them, by either friend or foe, while all can't help but admire the manful and noble course pursued by those men who would rather allow themselves to be cast into the felon's cell than to yield, what they consider, and are amply able to prove by holy writ to be

SACRED AND HOLY PRINCIPLES

May the God of Heaven bless our brethren who thus suffer for righteousness sake, and give them the promised blessings that they may feel to rejoice and thank God even in their "close quarters."

The remarks of Mr. Dickson, showing that the "Mormons" do not practice sexual intercourse outside of the marriage relation, and condemn the social evil, coming, as they do from a rank and bitter enemy, are causing considerable astonishment and I should not be surprised to hear that he had lost his official head for being in harmony with the "Mormons" and a traitor to his cause; for, does he not give the lie to statesmen and the clergy of the world, and take from them the most powerful club they have used for years in manufacturing public hatred against us, the plea, that we are a "grossly immoral people." How does his statement agree with the charges made against the "Mormon" missionaries for which

the press of the country tried to excuse the cold-blooded murder of our brethren in Tennessee, and under which also that infamous law, the Edmunds act, was passed in Congress? How did M. D. dare to come out so openly and confirm what we have always stated, that it was

NOT FOR IMMORAL PRACTICES

that we were persecuted? Take his statement and the one the Utah Commission made in their last report to the department, that plurality of wives (not women) was as much a principle of our religion as faith, repentance and baptism, and who dare any longer say that we are not persecuted for religion's sake.

Truly "the wicked are caught in their own snares," while "truth is mighty and will prevail." But no doubt the ordeal through which the Church of Christ or the Saints of God are now passing is a needful one, and will prove a blessing in disguise.

PERSECUTION

is to the people of God what the fire is in the purifying process of gold. Inestimable good will be the final result to the kingdom of God and its faithful adherents.

The life of a missionary in this country is quite different from what I found it in Europe, and at times real hard; yet there is an experience to be gained

here that cannot be gained in any other mission. This is the country to find man-made systems of religion; it seems as though hardly a day passes but what we meet something new in form of religion. And doctrines are believed as the genuine article which seem to us to be too absurd for any intelligent being to believe in; they have neither scripture nor reason on their side.

Well, the Latter-day Saint Elders have to meet them all, and thanks be to God, we can do it; not by our own wisdom but by the power of God, and because we have the weapon of truth and are sent of God.

Then again, it is here too where the real enemies are to be met in the shape of apostates, beaten preachers and the "Organ of slander" published in Salt Lake City, with its gross and shameless falsehoods written on purpose to incite the people to hate the very shadow of a "Mormon" Elder, and it, like many other of the devil's tricks, succeeds only too well. It fills the minds of the people with prejudice, the same as the Scribes and Pharisees in olden time succeeded in their devilish work until the masses of the people demanded the blood of Him who never sinned and brought Him to an ignominious death.

It is almost an everyday occurrence, that in our search for food or shelter, we have to call at some eight or ten or more houses ere we find any willing to provide for us; yet we do not feel very bad about it, for it has also its good results. By going from house to house in this way, many more get a chance to be proven than if we were admitted to the first house we came to. The greatest and most unpleasant enemy I have yet encountered is the

TOTAL INDIFFERENCE

which so many people manifest. To preach to empty benches or sit in a house where the people for humanity's sake will feed and shelter one, but utterly refuse to hear one word about the message we have, is as hard as anything I know of.

Take it all in all, a mission to any country, but I believe especially to the States, is a most excellent school for any one, and the education thus obtained by so many hundreds of Utah's men, both young and old, must in time prove an immense benefit to her population in many ways.

Times out here are very dull, money is scarce, and the large cities like this one are overcrowded with workmen who are out of employment there, for wages are low. The prospects for a crop are not nearly as flattering as last year. Many of the farmers will not get over half a crop. Still grain is cheap. The worms do great damage both in fields and garden.

MINNEAPOLIS

is a very nice city. It has a splendid location, and it is growing very fast, it being the great centre for the northwest. It has in operation the largest flour mills in the world. But here, like in all other cities of America, or the world, the two great evils that of intemperance and prostitution are spreading wide their poisonous fangs. The latter is not licenced by law, as in many other cities, but I am informed by reliable authority that the city's system of licensing the houses of ill-fame, of which there are a great many, is to make each of the keepers of these houses pay a monthly fine of fifty dollars.

There are between 400 and 500 drinking saloons in the city, which are by ordinance required so close on Sunday. This law however, is a dead letter.

I found that the moralists of our country would have a great field of labor right here in Minnesota, and no doubt all through eastern towns and cities without troubling themselves about Utah where the soul and body-destroying evil of sexual intercourse "outside of the marriage relation" is "condemned by the Mormons and deplored by the Gentiles."

The other day we had a good chance to witness the fulfillment of Isaiah's prediction "as with the priest so with the people." Not very far from here is a congregation of "Reformed Lutherans" over which a countryman of mine is

pastor. He is very popular too. A week ago last Saturday this very reverend joined several of his flock in a "social spree" at a saloon, which lasted until after midnight, then on Sunday, after a few hours rest, he preached to his congregation. At the close of the service a patch of grass surrounding the church was auctioned off to the highest bidder, and then priest and people went to another "spree," where the necessary "lager beer" flowed freely. What a howl would be raised if such a thing could be said about one of our Bishops in Utah? It would be held up to the world as an outgrowth and fruit of the degrading influence of polygamy, but here no one has anything to say against it.

Well, I'll close. May God bless and comfort those who are called to suffer for righteousness sake and help us all to manfully and faithfully hold out until the time when the rule of the wicked will be at an end—when time is sure to come—is the sincere prayer of your brother in the Gospel of Christ, THEO. BRANDLEY.

ONE OF THE HOLDERS OUT.

YUMA PRISON, Yuma Co., A. T.,
July 10, 1885.

Editor Deseret News:

As to-morrow is my last day in the "pen," for some time at least, I thought you would bear with me while I relate a few of my feelings as they occur to my mind.

As you are aware, six of us brethren from the Mesa came here on the 12th of April; Brothers Robson and Stewart for 90 days, Brothers Phillips and myself for three months, and Brothers Spillsbury and G. T. Wilson each six months. On the whole we found prison life a little ahead of what might have been expected, and we have made the best of it and enjoyed ourselves in the most agreeable manner, according to the circumstances we are placed in. Brothers Flake, Skousen, Robson and Stewart have served their terms of imprisonment honorably and returned home with the good feelings of the officers of the institution, as well as the inmates of the "pen." The question might be asked, What have you done against the laws of your country that you languish in a felon's cell? My crime consisted of

HOLDING OUT.

The indictment against me was trumped up. I was convicted without a jury and sentenced without a trial, as I plead to the indictment under the head of "unlawful cohabitation" in the marriage relation as that term has been rendered in so lucidly clear and transparent a manner, even so very clear that the blind can see it, by his Honor Judge Zane, in that ruling, which I am fully persuaded in my own mind was the first effusion in the shape of an extra-judicial decision of the kind that was ever so solemnly and elaborately proclaimed from a bench of justice since the world began.

Not even in the dark ages, when God talked face to face with such favored men as Enoch, Noah, Abraham, Isaac, Jacob, Moses and even His Son the Redeemer of the world, was ever such meaning to cohabitation even hinted at affixing a penalty without the act of sexual intercourse, within or without the marriage relation. The "holding out" cannot be made a crime in sense, or common law, as it is only an act of the mind. Even the dark pages of history, now to be read, containing the decisions and edicts of the Inquisition of the 16th century, have no parallel for inconsistency and ambiguous incongruities for that now being displayed by the legislators of our nation in her once honored judiciary. It seems that the very

ACME OF INCONSISTENCY

has been reached in the now boasted land of light and liberty, where freedom of speech and the press, and religious toleration are fully guaranteed without respect to race, color or creed.

If promiscuous intercourse of the sexes was the evil the law sought to suppress and correct, it would receive our hearty co-operation and support, and if the seducer and debauchee were hunted and prosecuted with one-hal the eagerness now displayed in rading upon the Latter-day Saints, a spirit of consistency would be manifested which would be more in accordance with the teachings of holy writ.

We are branded as disloyal and

DEFIERS OF THE LAW.

Was it defiance of the edict of the king in Daniel when he continued to pray to the God of heaven? If so, he was justified in it, for he was delivered by the power of the Almighty, and his accusers were destroyed. Did the three Hebrew children defy the royal mandate, when they refused to worship the golden image which Nebuchadnezzar, the king, had caused to be set up, or did they "hold out?"

And what became of those men who bound them and cast these "holders out" into the fiery furnace?

We must now, on account of the stubborn will of Moses and Aaron, class them as defiers of the law of the Egyptian government, for they, as well as all the Hebrew children, were doomed by law to perpetual slavery; but Moses and Aaron could not see the point, so they stubbornly resisted the decrees of Pharaoh until he with all the army and wealth of his kingdom