ANOTHER JUDICIAL MOVEMENT.

TERRITORY OF UTAH,
Second Judicial District,
County of Beaver.

To the Hon.—Boreman, Associate Justice of the Supreme Court of the Territory of Utah and presiding Judge of the Second Judicial District aforesaid.

Petition of I. Higbee, I. C. Haight, Wm. Stewart, Edward Weldon and Samuel Duke, all citizens of the Territory aforesaid, and Geo. W. Adair:

Respectfully showeth unto the Court that they, and each of them are separately indicted for murder committed at the Mountain Meadows, September 16th, 1857, as they believe and are advised—that the Constitution of the United States guarantees them a speedy trial by a jury of the vicinage, and to be confronted with the witnesses against them in the District where the offence was committed; that these defendants and each of them, are now ready for trial on said indictments, and will promptly appear in said Court for trial in accordance with law, whenever the Court is ready to proceed to the trial thereof.

These defendants further say that they have families dependent upon them for their support, and that to be imprisoned in a military prison, or in a penitentiary, while the law presumes them to be innocent, would not only leave their families to suffer, but deprive them of the proper means of preparing for their defense; and for this reason alone they have left the Territory of Utah, and concealed themselves from the officers thereof.

But these defendants, each for himself, now proffers—through their counsel, Sutherland & Bates—to appear in court and give bonds in any reasonable sum, to be fixed by this Court, for their prompt voluntary appearance at its next term, for trial at that time; that they will not depart therefrom without the consent of the Court; that they will stand to, abide by and perform all orders, judgments and decrees then and there made against them in the premises, and that they will not depart without leave of the Court.

That by this voluntary surrender now here proffered, all costs and expenses of their capture and arrest will be saved to the Territory and the ends of justice subserved by their attendance for trial, which they and each of them solemnly aver they are ready for.

Wherefore these petitioners pray that your Honor will fix the amount of bail to be given by them and each of them for their voluntary surrender for trial at the next term of this court, and that in giving such bonds, to be approved by said Court, that the Court will order that no warrant of arrest shall be issued against them or either of them, or if now issued, that the same shall be forthwith revoked on the completion of said bond or recognizance.

And your orators will ever pray.

TERRITORY OF UTAH, } ss.
Salt Lake County. }

Geo. C. Bates, being duly sworn, saith that he hath heard the foregoing petition and knows the contents thereof, that the same is true of his own knowledge, except as to the matters and things stated to be on information and belief, and as to those he believes to be true; that the reason why this affidavit is not made by the petitioners, is that they are out of this Territory, beyond its jurisdiction.

GEO. C. BATES.

Sworn to and subscribed before me this 2nd day of February, 1875.

J. H. BEADLE,
Clerk of the Supreme Court of Utah Territory.

SALT LAKE CITY, UTAH,
Feb. 5th, 1875.

Hon. Mr. Boreman, Associate Justice:

DEAR SIR—We herewith hand you for consideration a Petition which tells its own story: We are prepared and now offer to give bonds in $10,000 each for the prompt voluntary appearance of each of the defendants whenever they are needed for trial, and thus save all the expenses of the capture and return here. They are ready for trial to-day, but will not come and go to prison for months and months, waiting trial. Should you consent to the order, we will come to Beaver forthwith and give the bonds. The statute forbidding bail has nothing to do with the matter. We propose to give bonds for our voluntary appearance, that is all.

Yours,
SUTHERLAND & BATES.

TERRITORY OF UTAH, } ss.
Beaver County. }

In the Second Judicial District of the Territory of Utah, in Beaver County.

On reading and hearing the foregoing petition, the defendants, and each of them, by their counsel, Sutherland & Bates, move the Court to fix the amount of bonds to be given, for their free and voluntary surrender at the next term of this court, for trial on the indictment against them, and that on the execution and approval of such bonds by this Court, that an order be entered in each case that no warrant of arrest shall be issued thereafter, and if warrants are already issued, they shall be revoked and canceled.

SUTHERLAND & BATES,
Counsellors for Petitioners.
February 5th, 1875.

ORDER TO SHOW CAUSE WHY SUTHERLAND & BATES SHOULD NOT BE PUNISHED AND DISBARRED.

TERRITORY OF UTAH, } ss.
Second Judicial District. }

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

In the matter of J. G. Sutherland and George C. Bates, Attorneys at Law.

Ordered, that J. G. Sutherland and George C. Bates, be and appear before the District Court of the Second Judicial District of Utah Territory, *on the first day of the next term thereof, to be begun and holden at Beaver City in said district*, on Monday the 5th day of April next, to show cause why they and each of them *should not* be punished as for contempt, and be prohibited from practising their profession in said court, by reason of their professional misconduct, and delinquency, and insolent behavior in asking the Judge of said Court to hold communication with alleged felons, now out of the Territory, and fleeing from justice and concealed from the officers of the law; in asking the Judge to violate the law and prejudge whether such alleged felons be entitled to give bail when they are not before the Judge nor in charge of any officer, and when they declare they will not submit to the order of the court, if it be not in their favor, but will remain concealed out of the Territory and beyond the reach of the officers of the law; in insultingly telling the court, when asking for its ruling, that if they (the alleged felons) are not allowed to give bail, they will not deliver themselves up; in insultingly asking the Court to negotiate and come to terms with alleged felons, now absconded and fleeing from justice, and insultingly telling the Judge that these men will come in at any time and give bail if assured before hand that they can have an order made as they desire and all warrants be revoked; and that said attorneys will come to Beaver City and attend to giving of the bail whenever the Judge says he will rule in their favor, thus showing that these alleged felons are acting under the advice of said attorneys, and are fleeing from justice and concealing themselves from the officers of the law by and through the counsel and advice of these said attorneys; all which matters appear by and in the petition of I. Higbee, I. C. Haight, William Stewart, Edward Weldon, Samuel Duke and Geo. Adair, prepared by said attorneys and sworn to by said Bates, and also by and in the motion of said parties prepared by said attorneys and in the letter of said attorneys, which accompanied said petition and motion, which said petition, motion and letters have been sent by said attorneys to the Judge of said Court, and are now on file in the clerk's office of said District Court.

Ordered further, that a copy of the above order be served upon each of said attorneys and that their showings in answer thereto be made in writing and separately, and filed with the Clerk on or before the day on which they are required therein to answer.

Done in vacation this 15th day of February, A. D., 1875, at Beaver City, Utah Territory, as witness my hand,

JACOB S. BOREMAN,
Judge of the District Court for the Second Judicial District of Utah Terrritory.

A CARD.

SALT LAKE CITY,
Feb. 24th, 1875.

To the Public:

Having yesterday been served with an order from the Second Judicial District Court to appear on the first Monday of April, 1875, at Beaver, to show cause why I should not be punished for contempt of court, and prohibited from practising therein, and learning that the case is first to be heard and decided as usual, through a newspaper, I make this statement of the facts, leaving the people of Utah to decide whether I am guilty or innocent of the charges preferred against me; and having now obtained the enclosed petition which provoked the judicial order I will shortly make answer and show cause both to the court and the country—

On the 9th of December, 1874, I received a letter from eight persons outside of and beyond the jurisdiction of Utah, who supposed they were indicted for murder at the Mountain Meadows massacre, Sept. 16, 1857, from which I extract:

"We wish to engage you as our counsel. We have never evaded nor sought to evade a fair investigation of the crimes with which we are charged; but, on the contrary, have ever been willing and anxious to have such an investigation before a fair-minded and impartial court and jury. We are now anxious for a fair and speedy trial of our cause. If there be any chance for a speedy and impartial trial, we will pledge our honor to be and appear in any court of justice and meet all charges that may be preferred against us."

Acting on this retainer I went south, had several interviews with their attorney at St. George to ascertain by what means they could give bonds, and for what sums, in court, that they *would all voluntarily appear* without any arrest, at the next term of the court, submit themselves to legal custody and go to trial.

I learned there that unexceptionable bonds for $100,000 would be cheerfully given by their friends, that each one of these defendants—then beyond the jurisdiction of Utah—would voluntarily appear whenever needed for trial, provided they were permitted so to do. The effect of this would be to save all expenses and trouble as to their arrest, and to ensure either their attendance or $100,000 being paid into the Second District court at Beaver county. Returning to Beaver, I laid the proposition before the assistant U. S. district attorney, and he at once referred me to the statute, that in capital cases, *after arrest on warrant* no bail can be granted, which was no novelty to me. My answer was, that these defendants *were not arrested; that they were beyond the jurisdiction of the court; and that bonds for their voluntary appearance*, before arrest, would be lawful and valid, as I have no doubt they would be. Assistant District Attorney Wheedon finally advised me to apply to Judge Boreman, saying whatever order he might make would be satisfactory to him. Having no time to see Judge Boreman then, I called upon him thrice while he was in attendance on the supreme court in this city; I told him orally that I desired to make an arrangement as to the trial of the defendants in the Mountain Meadows massacre cases, and asked him to fix a time to hear me. He fixed an hour, when on calling I found him engaged, and then I stated to him that I would present in writing the petition that I proposed to make orally, to which he assented.

Accordingly I, myself, prepared the offending petition to the Hon. Judge Boreman, had it copied, duly swore to it on information and belief, and sent it to the judge but kept no copy. As these cases belong to my department of the business of our firm, I did not consult Judge Sutherland or have his assistance at all. If offence there be, I alone am solely responsible therefor, and Judge Sutherland is innocent of all connection with the matter.

That petition prayed on behalf of the defendants, the privilege of giving, *by their friends*, bonds to be approved by Judge Boreman, in $10,000 for each defendant, conditional, that such defendant should voluntarily appear at the next or any term of the district court at Beaver, when the government was ready for trial, and not depart without leave of the court; to stand to, abide by and perform all orders, decrees and judgments made by said court; and praying the judge, *after such bonds were given and approved by him*, to order that no warrants should be issued or served on them before the trial. In short, they would submit to the court, make their voluntary appearance, and so aid the officers of justice to enforce all punishments and judgments against them, without the expense, delay or uncertainty of their arrest. "My offence hath this extent, no more." So far from being guilty of a contempt, I proposed by these means to *ensure the prompt voluntary* appearance for trial of each one of these persons charged with criminal connection with that massacre, free of all expense to the government, and thus enable a jury to determine whether, as the law presumes, and as the result will prove, they were entirely innocent of the charges or not.

The petition thus presented by me was respectful in its language, and made on my part from the purest motives, and though the word "insultingly" is quite frequently used in the order served on me, yet it is manifestly intended to characterize solely the *substance* of my application, and not the form. Therefore I am to be punished as for contempt, for presenting a respectful petition to the judge, which, according to his opinion, he could not legally grant.

GEO. C. BATES.

Correspondence.

The Cause.

SALT LAKE CITY,
Feb. 24, 1875.

Editor Deseret News:

The Sutherland-Bates-Boreman imbroglio provokes considerable discussion among all classes. Without attempting to pass upon the question of whether the action of the legal gentlemen involved is or is not a contempt, we incline to the opinion that the action of both judge and counsel is without a precedent. If it is true, however, as has been maintained by great men, that the question of intent should be considered in coming to a conclusion as to the guilt or innocence of the parties to be arraigned, then we submit that the papers on their face are of the gravest importance, as they do not betray any evil design whatever. A formal application to a judge at Chambers for an order which was warranted by law, to facilitate the trial of men charged with having committed a crime, is what the groundwork of this alleged contempt is made of; an application for an *injunction* upon grounds wholly unknown to the law stands upon this precise footing, and while it may be said to be a novel way of enforcing the extradition laws, it is equally as novel to treat the application with and as a contempt. There is, however, a conclusion from which there is no escaping in looking at this matter, and that is this—that the wrong, if any has been done, on the part of the legal gentlemen in question, is the legitimate result of the conduct of certain officials that now are and have been in this Territory. The clamor for courts was answered by Congress by the Poland bill; the legitimate good that should have resulted from the passage of that act has been neutralized by gubernatorial proclamations and pronunciamentos, tacitly approved of by some of the judiciary to such an extent, that property is less secure, life and liberty less protected, and in the most important cases men charged with crime made more defiant than it ever was charged they had been. In some of the districts, from present indications, Rip Van Winkle could sit in judgment after his longest nap, were be alive to-day, upon men who have been immured in felons' cells for months already, and for whom no trial can be obtained on any terms. The legal presumption is that if there are witnesses upon whose testimony an indictment can be had, those same witnesses could be made amenable to the process of the courts to insure their attendance at the trial, *they could be held to bail to appear.* There seems to us to be no excuse for the delays in trying capital cases in some of the Districts. The fact that in no capital case can one be admitted to bail is the over-shadowing reason why there should be a speedy trial. To sum the whole matter up, the machinery of the courts works too fairly for partisan purposes. A tenth part of the population with a moiety representation on jury lists is insufficient for crusading purposes, and to this fell spirit may be traced all or nearly so of the "great Utah trouble"—no man is secure from the onslaught of either the partisan press or officials unless he is radically inimical to the interests of the majority of the people in the Territory. But the time is near at hand when all these parties will be "hoist by their own petard." The Poland bill will return to plague the inventors, and the bubble of "Utah lawlessness and barbarism," will soon be bursted. We hail with joy each step that is being taken by the adventurers and missionaries of the Utah ring.

O. L.

The Writ of Habeas Corpus.

What is the purport and meaning of the writ of habeas corpus? The substance of that great writ of freedom is that any person arrested by the government is entitled to be brought before a magistrate competent to decide whether his arrest and imprisonment are according to law. Any person in the community may be caught up and imprisoned, but if he is innocent he is entitled to an opportunity to prove his innocence and get a discharge. The writ of habeas corpus is the ordinary safeguard against unjust imprisonment. It merely entitles the prisoner to be brought before a judge authorized by law to decide whether his arrest and detention are legal. A suspension of the writ of habeas corpus confers upon the President the right to arrest and imprison citizens on his own mere *discretion, depriving* them of any *right to know whether there are* charges against them or not. When the habeas corpus is suspended the President can snatch up any citizen in any part of the country and put him in perpetual imprisonment by his arbitrary will, and the victim has no means of redress. He may be the most innocent man alive, and be able to establish his innocence by the strongest evidence; but the power of the President to arrest him and keep him in perpetual custody without judicial inquiry confounds all distinction of guilt or innocence and makes the mere arbitrary will of the President the supreme law. The suspension of the habeas corpus would make the President an irresponsible despot. It would enable him to imprison any citizen whom he disliked, or against whom he had any prejudice, without any sort of responsibility to the judicial tribunals. There is no definable distinction between an absolute despotism and a republic in which the Executive is authorized to suspend the writ of habeas corpus. The suspension of that great writ, which has for centuries been regarded as the chief bulwark of liberty, is simply a free permission to the Executive to arrest and imprison anybody he pleases on his own mere discretion, without any sort of accountability for abuses of power. The bill agreed on in the republican caucus authorizes the President to declare martial law and suspend the habeas corpus in any part of the United States, making him the sole judge of the necessity in every case. If this monstrous bill should become a law President Grant would be absolute master of the liberty of every citizen of the United States. It would only be necessary for him to proclaim martial law in any State to enable him to arrest and imprison his political opponents, without any power on their part to have their cases brought before a judicial tribunal to decide whether there were any grounds for their arrest. Such a law would make one man the absolute master of the liberty of every citizen. Under it he could arrest and imprison anybody he pleased and nobody could call him to account.

The merest glance at the constitution will suffice to show that the suspension of the writ of habeas corpus cannot be justified under present circumstances. The constitution does not permit that great bulwark of liberty to be suspended