And although the capital of this Territory is far removed from great commercial centres, and the Legislature unaided by any great legal minds, a few of the "memorialists" alone excepted, and without access to legal libraries, still we venture the assertion "that this code will favorably compare with any code of laws passed by any Legislature, whether State or Territorial.

It is also said by the memorialists that the powers granted to the municipal corporations are monstrous" for oppression and tyranny, "and the ordinances or laws adopted by such corporations are oppressive, vexatious and arbitrary."

These municipal regulations in the main were copied from those of the cities of Boston, New York, Philadelphia, and Chicago, and are in every respect quite as wholesome and liberal.

Doubtless these regulations have seemed oppressive and vexatious to some classes:

"No man e'er felt the halter draw
With good opinion of the law."

But how and in what manner these wholesome municipal regulations can vex or oppress the gentlemen who signed the memorial they do not explain, and we will not be unkind enough to suggest.

It is also said that these municipal corporations or governments, so established by the Legislature, are unauthorized by law. With what propriety can this be said when Congress has fully ratified the same, not only by failing to disapprove, but by a direct recognition, by subsequent legislation, (see act of Congress of 1867, volume four teen United States Statutes, page 541,) which, among other things, declares that all these corporations, through their respective corporate authorities, may take the title to the lands and lots, and hold the same in trust for the people of said cities, to be conveyed under such regulations as the territorial Legislature might provide? Again, by act of July 1, 1870, (volume sixteen United States Statutes, page 183,) Congress recognizes the validity of the Salt Lake City charter, and confers upon the municipal authorities thereof additional power. That such legislation is both legitimate and proper in all well regulated communities, let the statutes of all the States of our American Union attest and the many well-governed cities throughout the land bear witness. True it is that many of these municipalties have been peopled throughout this Territory, and the propriety and necessity for thus massing the people is readily explained.

The early settlers labored under many hardships and disadvantages which are not now experienced. They found here wild and roving bands of Indians, whose principal pursuit was theft, robbery and murder, and who, when opportunity permitted, indulged in taking the scalps of the defenseless settlers. These facts more than any others forced the people to settle in close proximity to each other, that they might more readily and effectually fortify themselves against the attacks of the savages.

For these widely separated settlements some local government was necessary. The ordinary municipal form was therefore adopted.

The memorialists further complain that the Legislature has "cantoned" out to some of its favorite citizens timber, water, &c. This has never been done to the extent claimed, nor has the Legislature ever attempted a disposition of the soil, or in any other way interfered with the rights of the General Government, or individuals.

Until about the year 1868 the people were all squatters, as the land was not, prior to that time, subject to entry and sale. The wood and timber of the Territory was all found in kanyons, inaccessible to the settler without a large expenditure of money and toil, and for this reason the Legislature, in some cases, thought it advisable to induce men of means to construct roads and build bridges in the kanyons, that the people might thereby have access to wood and timber; hence these grants as a remuneration for this expenditure. The grantees were permitted to collect toll of the persons using these roads and going into these kanyons for wood and timber.

Experience has shown the wisdom of these grants, as both individuals and the General Government have been thereby benefited, as this Territory could never have been settled to any extent without the use of such materials as were thus brought within the reach of the people seeking an existence on the public domains.

The increased facilities for travel and the improved roads have induced the repeal of most of these grants. It is also said that the legislature has neglected to provide for common schools.

This statement is without truth, as will fully appear by the examination of the very wise and liberal school law of the Territory, approved February 21, 1868, and found on page 25 of the laws of that year, which law provides for a general superintendent and trustees for the different districts, giving them power to levy and collect taxes for school purposes in their respective districts, and whose duty it is to report annually to the Legislature of their doings in the premises. It is also said that the property of deceased persons is by law confiscated and placed in the "Perpetual Emigration Fund." This statement also is wholly unfounded, as the law referred to provides that where a person dies or absconds, leaving property, and no legal claimant is known, the judge of probate shall take charge of the same and have it appraised, making two lists of the property so appraised, one of which lists the said judge shall place on file in his office, and the other he shall deliver with the property or the avails thereof to the treasurer of the "Emigration Fund," there to remain until called for by the person entitled to the same, when the said judge shall draw an order on said treasurer, and he shall deliver said property or money to such person on proper proof that he is entitled to receive it.

And the law further provides that any person failing to comply with any of the provisions of this law shall be subject to damages and be fined and imprisoned by any court having competent jurisdiction of the subject.

In 1854, the time of the passage of this law, this "Emigration Fund" was the most solvent if not the only solvent moneyed institution of the Territory, and the Legislature probably considered this the best depository for such property or money. With the same propriety it might now cause such deposits to be made in a national bank. We can see no hardship that can result through the provisions of the law; but time has shown its wisdom and beneficence, as the books of that institution show that such money and property thus deposited have been fairly and honestly accounted for and paid over with interest when demanded by the person or persons entitled to the same.

It is also urged that this property is taken in disregard of creditors and heirs. We would suggest that the words "legal claimant" must include both creditors and heirs, and this construction of the term has been uniformly followed in practice.

It is said that the law of December 30th, 1852, found on page 34 of the statutes of Utah, gives to all courts of the Territory equal jurisdiction in both law and equity, and that justices are thereby given unlimited jurisdiction in equity. This statement is wholly without foundation. By reference to the statute it will be seen that the law referred to can in no case apply to a justice of the peace, but only to a court of record, the legislature having defined the jurisdiction of a justice's court. (See page 105, Laws of Utah, 1870, justice's act.)

The memorialists say further, that the power given to a justice of the peace is "monstrous," in that it permits him to decide matters without process; and to act as arbitrator in certain cases, and refer to sections four and thirteen of the law found on page 33. As a complete answer to this, it may be said that these sections give to the justice such power only on the agreement of the parties in interest, which makes this exercise of power on the part of the justice a very harmless matter.

But a conclusive answer to this charge is found in the fact that these sections are repealed by the law of 1870, found on page 124 of the statutes of Utah. It is also charged by the memorialists that the jury law of the Territory is complicated and burdensome, and cumbered with so much machinery that to obtain a jury panel in any case not justly subject to challenge would be very difficult, and thus the right of trial by jury is in effect denied, and that criminals go unpunished and the rights of the people are unprotected.

In answer we would say that the only law in force on that subject in this Territory is found on page 126, and is as follows:—

"AN ACT"

"To amend 'An act defining who are exempt from serving on juries, and prescribing the mode of procuring grand and petit jurors and juries for district courts, and for other purposes,' approved January 21, 1859," (approved February 18, 1870.)

"SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*, That sections five, six, and ten of the act defining who are exempt from serving on juries, and prescribing the mode of procuring grand and petit jurors and juries for district courts, and for other purposes, approved January 21, 1859, be and the same hereby are repealed, and in lieu thereof the following be enacted: when a district court is to be held for a district, and the judge thereof is reliably advised that the ends of justice will be materially promoted by so doing, he may apportion the jurors, both grand and petit, between two or more counties of his district.

"SEC. 2. When a district court is to be held, whether for a district or for a county, the clerk of said court shall at least thirty days previous to the time of holding said court issue a writ to the territorial marshal if said court is to be holden for a district, or the sheriff of the county in which said court is to be held if said court is to be held for a county, specifying the time and place of holding said court, requiring him to summon eighteen eligible men to serve as grand jurers, and eighteen eligible men to serve as petit jurors.

"SEC. 3. Upon the reception of said writ the territorial marshal or sheriff, as the case may be, shall proceed to the office of the clerk of the county court of the county from which jurors are to be summoned, and the said clerk shall in the presence of the officer thoroughly shake the tickets previously deposited in a box or other safe place of deposit and draw therefrom promiscuously the number of jurors required to be summoned from such county for grand jurors and for petit jurors, keeping separate lists, and those drawn for grand jurors shall be summoned for grand jurors, and those drawn for petit jurors shall be summoned for petit jurors, which list shall be signed by the clerk and officer having said writs, and filed in the office of said clerk.

"SEC. 4. The court shall impannel out of the list summoned as grand jurors fifteen eligible men, to serve as a grand jury: *Provided*, if from any cause there shall not be in attendance upon the court of those summoned for a grand jury enough to make the number of fifteen, the court may order the panel to be made up of those summoned for petit jurors, or from eligible talesmen summoned from the body of the county or district, as the case may be, and not from the bystanders."

This law is substantially a copy of the jury law of many of the States, and has been found ample for all purposes.

The memorialists further complain that the Legislature has elected a set of Territorial officers who acquire and hold their offices in a manner contrary to the provisions of the organic act.

The officers referred to are the Territorial marshal, attorney and others, who are alleged to have been elected by the Legislature — evidently an offence of great magnitude in the eyes of the memorialists. Can the memorialists, who claim to be lawyers, candidly and seriously urge this objection in the face of the very plain language of Judge Chase, who, in the case of "Clinton *vs.* Engelbrecht," heretofore referred to, says:

"It is insisted, however, that the jury law of Utah is defective in two material particulars:

"First, that it requires the jury list to be selected by the county court, upon which the organic law did not permit authority for that purpose to be conferred.

"Second, that it requires the jurors to be summoned by the territorial marshal who was elected by the Legislature and not appointed by the Governor.

"We do not perceive how these facts, if truly alleged, would make the mode actually adopted for summoning the jury in this case illegal.

"But we will examine the objections:

"In the first place, we observe that the law has received the implied sanction of Congress.

"It was adopted in 1859, it has been upon the statute books for more than twelve years.

It must have been transmitted to Congress soon after it was enacted, for it was the duty of the secretary of the Territory to transmit to that body copies of all laws on or before the 1st of the next December in each year.

"The simple disapproval by Congress at any time would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body."

If then these officers have been elected by the Legislature, as is claimed, such election does not appear in the opinion of Judge Chase to be illegal; but, having received the implied sanction of Congress, may be inferred to be valid.

The memorialists assume that because the probate courts are given jurisdiction in civil and criminal matters, the rights of the district courts are thereby abridged, and as a necessary sequence the different courts are hostile to each other, and for that reason "the administration of law has fallen into utter disorder and confusion."

It is true the probate courts are by statute given this jurisdiction concurrent with the district court, and, as we have already shown, such jurisdiction has supplied a want for meeting which no other adequate provision has been made. But how the fact that the exercise of this jurisdiction by the probate courts can legitimately create hostility between the different tribunals, we fail to understand when we remember that the Legislature in giving to the probate courts this power has made them in every respect subordinate to the district courts, giving to the said district courts supervision over all inferior tribunals, and also providing for appeals in all cases from the probate to the district court; and it is found by reference to sec. 4 of the judiciary act, page 29, that the Legislature reposed such full and complete confidence in he learning, ability, and honesty of the judges of the district courts that it intrusted to them the important duty of reporting to the Legislature such omissions, imperfections, and evident discrepancies as should fall under their observation, which alone would seem to acquit the Legislature of any desire to deprive these officers of any of the power and authority delegated to them by the Federal Government.

We have endeavored fairly and candidly to meet the objections urged by the memorialists, and in our judgment have fully exonerated the Legislature of this Territory from any and all charges made against it. We think we have shown that none of the evils complained of exist in fact. It would be strange if, upon a critical examination of the statutes, no imperfections could be found, but we believe them to be framed with ordinary legislative intelligence.

That some confusion exists in the administration of the laws of Utah is undoubtedly true, but that this confusion is the result of any design on the part of the legislature to enact unjust and oppressive laws, or to fail to enact salutary ones, cannot in our opinion be truthfully asserted. We deem it our duty to add, that the unsettled condition of affairs in the administration of justice in Utah is chiefly, if not altogether, due to the construction placed on the statutes, by the district and supreme courts of the Territory. They held the jury law to be invalid, and in effect established a new law by a decision of the court placing the selection of the jurors entirely in the hands of the United States marshal.

This manner of selecting jurors was decided to be erroneous by the Supreme Court of the United States in the case of "Clinton *vs.* Engelbrecht," and had the effect to destroy the validity of all verdicts rendered by a jury in the district courts from the time when the decision was made until it was reversed by the United States Supreme Court, extending over a period of about seventeen months.

This erroneous decision of the court has unquestionably produced "disorder and confusion." They also decided that they were "United States supreme and district courts," and refused to allow the territorial officers to perform their duties in connection with said courts. This decision has also been reversed by the United States Supreme Court, in the case referred to, but much irregularity in legal proceedings was induced thereby.

They have also decided that the probate courts have no jurisdiction excepting in probate matters.

This leaves the Territory without proper protection by judicial authority, which certainly is productive of great hardship as well as "disorder and confusion."

A case involving the question of the jurisdiction of the probate court was appealed to the Supreme Court of the United States some two years ago and will soon be reached for trial, when it is to be hoped this matter will be fully settled. We are firmly of the opinion that when these vexed questions are decided by the Supreme Court of the United States the "confusion and disorder" complained of by the memorialists will no longer exist, and we respectfully protest against any legislation on the part of Congress which would abrogate the method of obtaining jurors by lot from the body of the county, and which would provide for their selection from a particular class of persons, as being most dangerous to the lives, liberties, and property of the citizens of the Territory.

We deem it not amiss to contradict the assertion, so widely published, and lately uttered on the floor of Congress, that the courts established here by legislative enactment are wielded in the interests of despotism; that voters are intimidated and overawed; or that any class of citizens are by the civil authorities excluded from any of the rights, privileges, and enjoyments appertaining to citizenship elsewhere.

We assert that entire freedom of religious and political opinion exists, and that the most unlimited license of expression goes unchecked.

Whatever errors may be chargeable upon the body of the people, it is evident to us that they countenance no known encroachment upon the inherent rights of their fellow-men.

In conclusion, we desire to reassert in strong terms our unqualified belief that the Legislature of Utah in its past history has endeavored to enact wise, salutary and just laws, and that it has never sought to contravene or set at naught the Federal authority. If it has failed in its efforts to meet wisely all the demands of legislation, that failure has resulted from the inexperience of the law-makers rather than from any desire to unfairly discriminate between different classes in the community. That its statutes will compare favorably with those of any other Territory will sufficiently appear to any one who will take the trouble to institute the comparison.

With increase of population and the added needs of a changing community, we do not doubt that existing statutes will be modified and new laws enacted, in order that the rights of all classes may be protected.

PROTEST.

In view of the foregoing facts, we, the undersigned petitioners, members of the legal profession, and business men residing in the Territory of Utah, would respectfully and earnestly protest against the reception by the Senate and House of Representatives of the memorial to which we have alluded. We thus protest because we know how baseless are its charges, how unfair its deductions, how malevolent the intentions of its author. As lawyers we regret the attitude assumed by the United States courts in Utah, because that attitude effectually blocks the wheels of justice and gives practical immunity to crime. We prefer to do business, if we can do it fairly, but we will not seek our own success in the destruction of the rights of others. Deeming the existing laws sufficient for the protection of society if properly enforced, we protest against the interference with them which the memorialists demand.

As citizens, we protest against any legislation of a destructive tendency, in view of the vast financial interests which would suffer from such an act.

In the interests of good order and fair dealing, and of that far-reaching commerce which would "have peace" in all our broad domain, and which would be the first to suffer were all power to punish crime wrested from the people and given over to aliens and strangers, as the memorialists evidently desire, we ask that the prayer of said memorialists be refused.

While thus protesting against any ill-advised action on the part of the law making power of the general government, we would respectfully suggest that the appointment of a commission empowered to visit Utah, and to fully investigate all matters of complaint, would further the ends of justice and meet the approval of every worthy citizen.

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