

the "balance of power," let it turn to that portion of their history when they derived nothing from the state, because there was no state; when, starving and almost unclad, they wrested fruitfulness from the unwilling hand of sterility; when later, they founded the state in due formality; when, still later, they instituted the press, the school house, the mechanisms and the sciences—thus always and ever fostering and bringing into full fruition the state with its adjuncts. This was accomplished through their industry, hardihood, intelligence and morality. If they could do so much with so little, what could they not do with a broader field and improved facilities?

THE GOVERNOR'S APPOINTMENTS.

JUDGE ZANE SAYS THEY ARE VALID, AND THAT URIAH J. WENNER SHOULD HAVE BEEN PROBATE JUDGE.

AN OUTRAGEOUS DECISION UPHOLDING GUBERNATORIAL "ONE MAN POWER" IN UTAH.

The suit of U. J. Wenner against Elias Smith, for salary as probate judge of Salt Lake County, under an appointment from Governor Murray, was concluded in the Third District Court yesterday afternoon, and a decision was rendered by Judge Zane this morning. The suit was originally planned for \$4,000, and a jury impaneled to try this question. Yesterday afternoon, however, an agreement was made by both parties as to the amount, and all the remaining issues being questions of law, there was no necessity for the jury, which was discharged.

Wenner, an individual unheard of before in the community, was one of those appointed to office by the Governor in September, 1882. He was designated as Probate Judge of Salt Lake County, the appointment having been made under the following provision, in the law of Congress passed in August, 1882, to prevent what was alleged would be a state of anarchy in Utah:

The Governor of the Territory of Utah is hereby authorized to appoint officers in said Territory to fill vacancies which may be caused by a failure to elect on the first Monday in August, 1882, in consequence of the provisions of an act entitled "An act to amend Section 552 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," approved March 22d, 1882, to hold their offices until their successors are elected and qualified under the provisions of said act; *Provided*, that the term of office of any of the said officers shall not exceed eight months.

Judge Elias Smith was then acting as probate judge, having been elected to the office by the people. The Governor's appointee demanded a surrender of the position, which was refused, the judge maintaining that he was entitled to the office under the provisions of the local statute which declares in reference to probate judges and others of the county officers, that they "shall hold office for the term of two years, and until their successors are duly elected and qualified." Wenner was therefore never given possession (nor were any others of a long list designated by the Governor), but subsequently sued for the emoluments attached to the office. The case was argued by Judge Sprague for the plaintiff and Judge Harkness for the defense, and this morning the Court rendered a decision in favor of the plaintiff, in substance as follows:

The action is brought by the plaintiff to recover fees received by defendant as Probate Judge of Salt Lake County. The defendant had been elected on the first Monday in August, 1880, to hold office until his successor was elected and qualified. On March 22, 1882, a law was passed by Congress, providing for five commissioners for the Territory of Utah, and vacating all election offices in the Territory, the commission to conduct the election. No election could be held unless in accordance with that act. In August, 1882, the attention of Congress was called to the fact that the commissioners had not been appointed in time for the election on the first Monday in August, which could not therefore be held. Under these circumstances, Congress passed the provision authorizing the Governor to fill vacancies caused by a failure to elect in consequence of the act in reference to bigamy, etc. Under this law the Governor appointed Wenner, and the question is, Had the Governor the power to do so under this law? The plaintiff claims that he had, while the defendant insists he had only power to fill vacancies, and there was no vacancy. The weight of authorities would seem to be on the general provision that the Governor could only appoint when a vacancy actually occurred. This language of Congress is coupled with other words, with which it must be construed, and also with reference to the act of March 22, 1882. The language authorized the Governor to fill vacancies which may arise by failure to elect in consequence of the act of 1882. It did not give authority to fill all vacancies, but only those resulting from a failure to elect—in case an election was prevented—in consequence of the act of March 22. Some light may be thrown on this act by the general intent of the law to prevent polygamy—the main object of the law was a blow at polygamy. This was evident, as it

prevented polygamists from sitting on juries—or even believers in polygamy trials—or from being eligible for election or holding any office of public trust under the United States. The intention was to deprive them of the right to hold office—to prevent them from holding office. It was reasonable to suppose that the law-making power understood that such persons were in office in Utah, or the act would be aimless. All the officers elective in August, 1882, held under the same provision. Congress must be presumed to know the law—as this was required of common people—and they had passed it; the President had approved of it, and if the defendant's claim were correct, it would be for no purpose whatever. In view of the language of the law, the general intent of the act, and the fact that Congress was attempting to provide a remedy for failure to hold an election—a result of their own action; they had defeated the election and knew it—and for that failure they sought a remedy by giving the Governor power to appoint. They regarded the failure to elect as constituting a vacancy. Senator Brown objected to the legislation and called their attention to the holding over provision, but they paid no attention and passed the law, the object of which was to provide a substitute for the election—to provide for appointment in case an election was not held. In view of the language, the intent of the law, and the circumstances under which it was passed—the object being to prevent polygamists from holding office—this provision was intended to provide for the failure to elect. The Court was not disposed to hold whether a judicial ascertainment shall determine whether or not a man is eligible to office, from the fact that the defendant in this case was conceded to be a polygamist. Nor would it inquire whether the Governor made an investigation or not. The Governor had considered that he had a right to make the appointment, and his judgment was conclusive as to any finding of fact. The Territorial Supreme Court had ruled on this, and it is not the province of the District Court to overrule that decision. In the light of the decisions and the language of the act, the Court holds that the Governor had the power to appoint. The question had been raised that there were two issues in the case, but as all were questions of law they could be tried together. The defendant had set up his services as an offset against the fees received. In this case, the plaintiff, on September 22, 1882, had received his commission and demanded the office, which was refused. This refusal was in good faith, but the defendant had assumed to say what the law was, and if he mistook the law he must take the consequences. The plaintiff could not be deprived of the right to assume the duties of the office. He could recover for but eight months, as that was the period during which the appointment continued, and would be entitled to fees therefor amounting to \$1,400, and interest and costs.

An appeal to the Supreme Court will be taken from Judge Zane's decision.

LOCAL NEWS.

FROM FRIDAY'S DAILY, OCT. 30.

Fire.—By letter from Brother Thos. Cooper, of Monroe, Sevier County, to Bishop W. B. Preston, dated October 26th, we learn that a fire there on that date destroyed 100 tons of hay in the tithing office yard, and nearly all the fencing; the granary was in great peril, and but for vigilant efforts it would have gone also. The same old story: Children and matches.

Court Proceedings.—In the Third District Court yesterday afternoon, in the case of Frederick Crowton vs. John T. Lynch; judgment was given for defendant.

W. H. H. Bowers vs. London Bank of Utah; case set for Thursday, November 12.

To-day the Court announced that tomorrow at 10 a. m., it would make a new setting of cases for trial in November.

B. O'Brien vs. E. C. Dance et al.; trial before jury; verdict for plaintiff of \$120 and costs, \$61.45.

W. R. Stewart vs. Wm. Jennings et al.; jury waived and trial in court in progress.

Juliana Smith vs. James McKnight et al.; dismissed.

Fire at Butlerville.—A destructive fire occurred at Butlerville, in this county, about noon yesterday, by which Wm. McGhie, who is justice of the peace and postmaster of that place, lost thirty tons of hay, besides his wagon sheds, straw, chaff, etc.—a serious loss to him, for he is a poor man who makes his living by cultivating gravelly ground, and that which was consumed constituted a large share of his products for the present season.

The fire was started by two careless or thoughtless neighbor boys—one of whom was his own grandson—who, after kindling it under the shed, left it and went to the house, where they remained for some time without saying anything about it. The stackyard being on the bench and the house some distance below it, on the creek, the conflagration was totally beyond control before the owner was aware of it. The fire was still smoldering when our informant left Butlerville to-day.

Fatal Accident.—By letter from Brother T. W. Brewerton, of Willard, Box Elder County, we learn the particulars of a fatal accident that occurred at that place about noon on Monday last:

Cyrus J. Call, son of Omer and Eleanor Call, aged 14 years and eight months, while at work at the molasses mill of John P. Woods, which is worked by water power, accidentally had his clothes caught in the cog wheels of the mill and his body drawn into the meshes, tearing his left side fearfully and ripping out four ribs, making a ghastly wound and exposing the heart and lungs of the sufferer.

Doctor J. X. Allen, of Ogden, was immediately sent for, but on his arrival could do no good. In about two hours after the accident death ended his suffering, and in spirit took its flight from the mangled tabernacle.

The funeral took place on the afternoon of Tuesday, the 27th, and the remains were followed to the grave by the afflicted relatives and a host of sympathizing friends.

Deceased held the office of Deacon in the Ward, was a member of the choir, M. I. Association, and of the Willard Sabbath school, in all of which positions he was punctual, energetic and trustworthy, and gave promise of a bright future. "In the midst of life we are in death."

Suicide.—A resident of the 10th Ward, by the name of John Abbott, who for some time past has been in poor health and unable to work, and quite gloomy as a result, made a successful attempt this morning to shuffle off this mortal coil. A couple of weeks ago Mr. Abbott made the remark that as he could do no good it was of no use for him to live and linger in pain, he being a sufferer from rheumatism. About 11 o'clock this morning Mrs. Abbott went out to purchase some meat for dinner, and upon her return discovered her husband upon his knees on the floor, with a razor in his hand, and the blood gushing from a gaping wound in his throat. The alarm was immediately given, and a number of persons answered the summons. A surgeon was also telephoned for. Mr. Abbott had taken the razor in his right hand, and kneeling on the floor, cut his throat, above the windpipe, from under the chin around to the right, making a fearful looking gash about four inches long. He afterwards sank, face downward, on the floor, and called for some of those who were present to trample on his body, that the blood might be forced out more rapidly.

When the surgeon arrived, the dying man was turned over on his back, and the horrible cut plainly brought to view. The windpipe was untouched, but was laid bare, as was also the root of the tongue and the carotid artery, which, however, was not severed. The surgeon tied some of the arteries, and succeeded somewhat in checking the flow of blood, but as long as Abbott could articulate he expressed a wish to die, and at about one o'clock this afternoon breathed his last.

The deceased was about 66 years of age, and came to Utah from England five years ago. The coroner was notified, and an inquest will be held this evening.

ART NOTES.

WHAT SOME UTAH PAINTERS ARE DOING.

J. W. CLAWSON.—Many will remember the fine portrait of Hon. W. H. Hooper, by this artist, which was for a time on exhibition in one of the windows of Z. C. M. I. A few days ago Mr. Clawson completed a picture of Gen. H. S. Eldredge, of which he justly feels proud, it being the best effort he has yet made. Not only is it remarkably precise in general contour, but in the expression of the face a living intelligence seems to beam from every feature. The bust also gives a correct impression of Gen. Eldredge's fine physique.

A painting which yet remains in Mr. Clawson's studio, on First South Street, is a full length portrait, in pastels, of the little son of Mrs. Birdie Cummings, Willie, who recently died of diphtheria. The little fellow was a bright, intelligent child, and his picture does him full justice. In portraits and figures Mr. Clawson stands at the head of his profession in Utah, having had a thorough training in the most minute details, as well as being in possession of genuine talent.

ALFRED LAMBOURNE.—In his temporary studio, over Walker Brothers' store, Mr. Lambourne has placed for the admiring gaze of visitors several of his more notable landscape paintings, among them being views on the Pacific Coast, near Monterey, Cal., morning and evening, the gateway of an old Spanish church in California, and his three latest productions, Shoshone Falls, on the Snake River, Idaho. Each of the three pictures differs from that of Mr. Culmer, which we noticed a few days since, in presenting a different view of the falls. The largest is 40x60 inches in size, and shows the falls at their greatest width—800 feet—just where the water pours over the last and highest precipice. Just above the large fall are a series of smaller cataracts, from the almost placid river above, so that by the time the stream reaches the ledge where it seems to pause before making the final plunge, the water is all commotion, the dashing waves being tipped with filmy crests of foam. On the opposite side of the river loom the castellated turrets of lava, to a height of more than a thousand feet, brown and bare, the volcanic formation, which appears to have been growing for centuries, resting on an understratum of porphyry, of which the rocks and ledges at the

river's edge are composed. On the near side of the stream a small rock juts out over the chasm, and in a crevice in its side is firmly implanted a small cedar, which the visitor can hold on to as he gazes into the abyss below. While one watches the raging torrent pouring into the impenetrable mist, the water seems to gradually flow more slowly until at last it appears perfectly still, and as a sensation of being carried upward through space with fearful velocity creeps over the venturesome tourist, he scrambles back to terra firma to emerge from a dizziness that would quickly hurl him from his perilous position into eternity. From this point one reaps the full benefit of the awful roar of the cataract, which has, on a quiet night, been heard a distance of thirty miles.

The artist in this picture conveys an idea of the magnitude of the wonderful scene at noonday, with its various combinations of light and dark shades, which impresses the beholder with a feeling of awe. The drawing is after the picture by Thomas Moran, though at the time Mr. Lambourne made his sketch he was not aware that that great artist had selected the same point of view.

The other paintings are 30x30 inches, one looking down the river over the falls, and the other looking up from below. In some respects these are superior to the large one, as, though not so grand, the harmonious blending of colors under different shades of light render them more attractive. In the upper view, the rays of the setting sun, as they reflect from the river beyond the delicately tinted mist of the falls, produces a remarkable effect. The scene from the foot of the falls is not surpassed by even that of Niagara, which is not so high, by 24 feet, as Shoshone, and though the volume of water is greater in the autumn, still in flood time, when the river at the falls is eight or nine feet higher, Shoshone Falls must be given the palm.

JAS. F. HARWOOD.—This rising young artist is now at the Academy of Design, San Francisco. A letter to a gentleman of this city says that when Mr. Harwood made application for admission to the Academy as a student he was required to present a sample of his handiwork. He handed in a small study of a cluster of grapes, the execution of which created considerable surprise, and he was informed that it was without exception the best piece of work that had been offered by any applicant. Mr. Harwood is to be congratulated on his bright prospects.

H. L. A. CULMER.—Mr. Culmer is engaged in putting on canvas a view of Twin Falls, on the Snake River.

SEMI-QUAVERS.

"La Mascotte" has been performed 850 times in Paris.

Madame Palmer-Nevada opens her concert season in America on the 27th of November in Boston.

Dr. J. Parry, of Swansey, Mass., has written a new oration, "The Apostle, or Scenes in the Life of St. Paul."

Haverly's Minstrels had a successful two nights' engagement in Salt Lake City, Oct. 26 and 27. The combination is a good one, and draws crowded houses.

Careful preparation is being made for a grand concert in the Salt Lake Music Hall at an early date. Mr. Giles is gathering around him for the occasion some of the best talent the city affords.

An odd result of the recent popular success of Messrs. Gilbert & Sullivan's "Mikado" has been to give the languishing trade in Japonaiserie quite a little boom. The stage is evidently capable of an influence for good—as far as the dealers in this class of curios are concerned.

Mme. Marie Rose has at last given way under the constant strain of work in the Carl Rosa Company, and is at present prostrated by overwork. This admirable songstress has now been for years working like a machine, and the time had come when a cessation from labor was necessary.

Is this but a world of trouble—
Sadness set to song?
Is its beauty but a bubble
Bound to break ere long?
Are its palaces and pleasures
Fancies that fade?
And the glory of its treasures
Shadow of a shade?—*Mikado*.

Edward Boehm, the widely-known clarinet player, died last week in New York from lung disease. He was 60 years of age, and had been for fifteen years the first clarinet player of Thomas' orchestra. He was first a member and lately vice-president of the Philharmonic Society. Mr. Boehm was a remarkable musician and an exquisite clarinet player, in fact one of the best in this country.

Mr. D'Oyley Carte lately informed an interviewer that the gross receipts of last year in connection with the Gilbert-Sullivan operas has been \$785,000, and that the total sum since 1877 would amount to about \$5,000,000. The salaries of the artists, of which about 350 are employed, amount alone to about \$5,500 per week, without the wages for employees of all kinds and the expenses of scenery, costumes, travelling, local theatres and orchestras as well as the general expenses.

As might have been expected, the ruling of the New York courts in the case of "The Mikado" has been promptly reversed in Massachusetts. Of course, had it been otherwise, the charm of "uncertainty" which characterizes judicial decisions would have been removed, and thus legitimate cause for discontent amongst litigants would have arisen. The legal profession generally would also have resented such an unprecedented example of unanimity of opinion as being prejudicial to their dearest interests.

The Japanese opera, "The Mikado," will be rendered at the Salt Lake Theatre on Monday and Tuesday, November 2 and 3. One matinee and two evening performances will be given under the same management which so successfully produced "Patience" last spring. The talented conductor, Prof. George Careless, has given his personal attention to every detail, and an artistic rendition of the popular comic opera is expected. The Japonaiserie to be used on the occasion came from the establishments of two Chinese local merchants, Hong-Hop and Quon Wong Sing.

Mozart's pianoforte had five octaves, F to F, and Clementi's had no more till about 1793, when five and a half octaves were gained by going up to the next C. In 1796 appeared the first piano with six octaves, from C to C; and this compass was that of the grand pianoforte given by Messrs. Broadwood, the great London house, to Beethoven in 1817, the one he used to play for the rest of his life. The general introduction of a six octave compass, whether from C to C or F to F, was not until 1811, when the six and a half octave compass also came in. The gradual extension to seven octaves by G, and then A, upward, and to the lowest A, downward, was not everywhere completed until 1851.

An anecdote is current concerning Verdi and his composition of the "Miserere" in "Trovatore." The great maestro tried for long to compose a melody in which sorrow and touching dignity should be blended. In vain he sat up during long winter nights at a piano endeavoring to seize the motif he required. The inspiration would not come, and Signor Verdi was considerably discomfited. One day, however, he was called to the death-bed of an old and valued friend, whom he found unconscious and *in articulo mortis*. The shock was so great that he felt a sensation of choking. Tears would have relieved him, but they refused to flow. Verdi rushed from the room, and in the next apartment saw a piano. The impulse was instinctive to sit down and express his pent up grief through it. The famous "Miserere" was the result.—*London St. Stephen's Review*.

Music from gas is the latest German invention in a novel musical instrument called "The Pyrophone." Its compass is three octaves, with a keyboard, and it will be played in the same manner as an organ. It has thirty-seven glass tubes, in which a number of gas jets burn. These jets, placed in circles, contract and expand like the fingers of a hand. When the small burners separate the sound is produced, when they close together the sound ceases. The tone depends upon the number of the burners and the size of the pipes in which they burn, so that by a careful arrangement and selection all the notes of the musical scale may be produced in several octaves. Some of the glass tubes in which the jets burn are nearly eleven feet high. When the "Pyrophone" is played upon with the keyboard, it gives out a rich, full tone of remarkable delicacy, and to a great extent resembling the human voice.

Royal Blood.

We are all kings and queens in this country, and we have a right to as good blood as that which courses through the veins of emperors. If the blood is poor and the cheeks are pale, it is well known that Brown's Iron Bitters is the great tonic which will give color, vigor, and vitality. Mr. M. K. Gibson, of West Point, Miss., says, "I felt weak and debilitated. Brown's Iron Bitters made me strong and well."

Brown's Bronchial Troches for Coughs and Colds: "I think them the best and most convenient relief extant."—*Rev. C. M. Humphrey, Gratz, Ky.*

VERY REMARKABLE RECOVERY.

Mr. Geo. V. Willing, of Manchester, Mich., writes: "My wife has been almost helpless for five years, so helpless that she could not turn over in bed alone. She used two Bottles of Electric Bitters, and is so much improved, that she is able now to do her own work." Electric Bitters will do all that is claimed for them. Hundreds of testimonials attest their great curative powers. Only fifty cents a bottle at Z. C. M. I. Drug Store.

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