posals for keeping prisoners; that the Warden may hire out the convicts; that the proposals for keeping prisoners shall be received by the Prison Directors, and they shall decide upon them." In so far as the right to contract for the keeping of Territorial prisoners exists anywhere, it exists with the Warden and Prison Directors. I say that if there be any power in Utah competent to bind the people of Utah; if, in the language of the Attorney General, there are any "proper authorities" who can make competent contract, to bind the Territory of Utah, those proper authorities are the Warden of the Penitentiary and the Board of State Prison Directors. I do not assume, however, that the power exists with them; and when the counsel on the other side asks, "Where does this power exist? Does it rest with the Warden or Directors?" I say no. I say it does not rest anywhere; neither is it floating around loose, to be siezed upon by the first officer, executive or ministerial, who may take the opportunity of locating a claim upon it. It is a power withheld, it is not granted to anybody. The Territorial Legislature never contemplated the present contingency. Congress passed the act of Jan. 1871 since there has been a session of the Utah Legislature. The Legislature of Utah did not vest in anybody the power to make a contract with the Government of the United States to board Territorial convicts. If then there be no power in the Warden and Directors to make a contract, I ask the counsel on the other side to tell me where does the Governor get the power to make such a contract? I call upon the counsel now to cite me to one line of authority, one word of a statute conferring upon the Governor any such authority. It is not in the acts of the Congress of the United States; it is not to be found in the Territorial statutes; and I venture to say that no decision can be found in the Reports of any State in this Union,—declaring that the Governor shall take by intendment or by implication any power whatever to contract in behalf of the people whose Executive he may chance to be, and certainly the Governor is not a residuary legatee of all the powers which do not happen to be otherwise bestowed.

The Territorial Legislature having omitted to empower anybody to make a contract with the United States Government in its behalf for the keeping of convicts, is it therefore to be presumed that such power, since it ought to exist somewhere, must therefore exist in the Governor? That would indeed be a dangerous extension of the prerogatives of the executive. I submit, if your honor please, that the Marshal evidently never sought to ascertain who were "the proper Territorial authorities." He never went near the Warden or board of State Prison Directors,—the persons who it might be supposed were charged with the duty if anybody was charged with it. He went to Governor Woods. Did his Excellency inform the United States Marshal that he was merely Executive of the Territory, and that he had no power outside the law? Did he tell Marshal Patrick that he could not bind the people of this Territory to pay one dime on any kind of a contract he might make? It seems not. He made a contract which has been introduced in evidence. (Mr. F. read contract).

The Court. Being in the disjunctive, could not these instructions, I mean the instructions of the Attorney General, be construed in the light of Legislation?

Mr. Fitch. I should say not.

Court. I only asked the question to get the views of counsel on it.

Mr. F. I think it is to be construed in this way,—the Attorney General, presuming that the Territory would desire to make the arrangement, makes regulations under which the United States would consent to receive prisoners; and then directs the Marshal to confer with the proper authorities of the Territory. The Attorney General does not designate the Governor as the proper authority. He says, "The Governor or other proper authorities," he does not know who the proper authority is, that is for the United States Marshal to find out. But it seems upon receiving this instruction the Marshal proceeds to make a contract with Governor Woods.

Now, I call again upon the counsel on the other side, and I shall pause for a reply, I ask them to be kind enough to point out to me an act of Congress, an act of the Legislature of the Territory, or a judicial construction of any court in Christendom which gives by intendment power to a governor of a territory to bind the people of a territory for the payment of money. If there be none,—and I hear no answer, therefore I presume none is to be cited—then if your honor please, that paper signed by his Excellency, Governor Woods, by which he agrees that the Territory of Utah shall pay a certain sum of money to the United States Marshal, is entirely worthless for the purpose of binding the Territory of Utah, and makes as little impression on her treasury as the sere leaves of the locust make when they fall upon the stony street.

Then if the Territory has an option, and that option is yet unexercised, and there is no power vested in any one to exercise it, it must necessarily remain unexercised until the Legislature of the Territory shall see fit, on proper assembling, to designate some person who shall act as agent of the Territory to make a contract, which the governor has certainly no power to do.

It seems to me, please your Honor, that the Marshal and Governor caught the phrase, "the Governor or other officer," in the letter of the Attorney-General, and that they hastened to make this contract, and the Marshal comes in here now and asks this Court to sustain a usurpation—that is the only word to characterize it. It is nothing more nor less than a usurpation of power, on the part of the Marshal and an attempt at usurpation on the part of the Governor.

Under the Act of Congress the Marshal of the United States has no more right to the custody of Territorial prisoners, without the consent of the people of this Territory in some way expressed, than he has to the custody of persons not charged with crime at all.

I do not think, if your Honor please, that the confident expectation of the United States Marshal, that he will obtain a judgment from your Honor to sustain him in his position, will be realized, for I have faith in the wisdom and fairness of your Honor. I know very well, and I speak in no spirit of ascerbity, but with a feeling of sorrow, I know very well, that when Utah Judges have heretofore been brave and honest enough to conscientiously decide according to their own convictions, instead of sustaining the Executive—right or wrong—the consequence has been official displacement.

I know that the path of judicial independence has been and may again be in Utah a road to the official scaffold. But I do not doubt that your honor sustained by your own self respect will walk that path nevertheless, feeling that if you are to be removed for deciding your honest convictions the sooner it is done the better, and that even in such event you will be able to say with the noble Roman,

"More true joy Marcellus exiled eels,
Than Cæsar with the Senate at his heels."

The people of this Territory await with some anxiety the determination of the questions involved in this case, they desire to know if officers not of their choosing can, against their wishes, direct the disposal of their revenues, and the language of their laws. They look to you with confidence as a clear headed and upright Judge. Be just to them, be just to yourself.

The Court then adjourned till Thursday morning, at ten o'clock, when Mr. Baskin concluded the argument on the part of the prosecution. The following is a synopsis of his remarks:

Mr. Baskin commenced by saying that his associate, Judge Morgan, and the counsel for the defense had stated that the questions involved in the case were important. He thought, however, they were not important because they were doubtful. The first proposition made by Mr. Fitch was, "Are the defendants guilty of a breach of the statutes under which the charge is brought against them?" He (Mr. B.) read one of the statutes under which the charge was brought, which relates to the resisting of any United States officer in serving a process of law, and also read the 93d section of the statutes of Utah, in relation to the same matter. He also cited the act of Congress, passed January 10th, 1871, relating to penitentiaries, and endeavored to show that this act empowered the United States Marshal not only to take possession of the penitentiary, but invested him with all the powers necessary for a prison keeper. He would show that the power is with the United States Marshal; that the word may, contained in the act, could be construed as being mandatory and not directory, as claimed by the other side. If, as stated by the defence, it is merely directory and not mandatory, who is to have the discretionary power to decide in the matter. This discretionary power is clearly with the Attorney General, and the fact that the U. S. Marshal acted under the instructions of the Attorney General shows that he (the Marshal) acted lawfully. (Mr. Baskin here read the warrant of commitment of Killfoyle, which showed by what authority Warden Rockwood kept the prisoner in charge.)

Mr. B. Said Mr. Fitch accompanied a remark of admiration for the glorious institutions of our country, with another of regret that many of the representatives of the government are unworthy. Why this remark was made he did not know. It is true that it is impossible to prevent corrupt men from gaining official positions, yet it is a glorious fact that when corruption becomes apparent, and offices are within the gift of the people, the evil is remedied by resort to the ballot-box. The mittimus does not order A. P. Rockwood to keep the prisoner Killfoyle in custody, but the Warden of the penitentiary. When an executive U. S. officer made demand for the prisoner, he was asked for an order of court. He argued that the mittimus itself was an order of Court. He wished to know what assurance there was for protection in a place where a U. S. Marshal when acting under the instruction of the first law adviser of the chief executive of the nation. can be resisted. The act of Jan. 10, 1871, constituted the U. S. Marshal warden of the penitentiary, and the power of the former incumbent ceased after the passage of the act. The power conferred on the U. S. Marshal was as absolute as that of the Warden previous to the act.

He stated that Mr. Fitch said, if the law be ambiguous, it can be construed in accordance with surrounding circumstances. It is right to suppose that the act of Congress was passed to meet the circumstances existing in the various Territories. He read the Territorial Statutes relating to the hiring out of convicts on public and private works, as an evidence of a door for the admittance of official corruption, especially as it was presumable that Mr. Rockwood was a member of the Legislature at the time those statutes were passed. He here intimated that this may have come to the knowledge of the general government, and may have caused it to pass the act relating to penitentiaries. It was necessary for the U. S. Marshal to obtain a writ of *habeas corpus*, for the mittimus itself was an order of court sufficient. He liked to play back the Utah laws on those gentlemen. He then read Sec. 27 of the revised statutes of Utah, relating to the course to be pursued by officers in search of persons who may be secreted. He said the U. S. Marshal was recreant to his duty in not summoning a posse of men and leveling the city prison to the ground when refusal was made to give up the prisoner therein confined. He the Marshal had a right to take the prisoner by force. Who is it asks resort to a writ of *habeas corpus* in the matter? Why, a little one horse officer, who has lost control of the penitentiary. That prison should have been leveled to the ground, if it had taken the whole forces of the government to do it. If the supposition be correct that resistance would have been made and blood shed had the U. S. Marshal attempted to take the prisoner, it is the more necessary that it should have been done, for the sooner the law is vindicated and those committing such flagrant breaches of the law be trampled under foot the better. The case shows a wanton resistance to a U. S. officer in the discharge of his duty, attended with circumstances of a most aggravating description. He requested that, as the mittimus was public property, that document should be delivered to the U. S. Marshal, that he may take such action upon it as he may deem best..

The court then adjourned till to-morrow (Friday) at ten o'clock, when it was announced a decision would be rendered in the case.

Judge Hawley's Opinion in the case of the U. S. Marshal against the Territorial Warden!

AT ten o'clock this morning, Judge Hawley delivered the following reasoning on the above case:

Messrs. Rockwood and McAllister were accordingly held to bail in the sum of one thousand dollars each, to answer before the Grand Jury.

(*From the Evening News of Sept. 8.*)

THE CASE OF THE MARSHALS AND THE WARDEN.

THE preliminary examination of A. P. Rockwood, Warden of the Penitentiary, and J. D. T. McAllister, City Marshal, before Associate Justice G. M Hawley, in Chambers, for refusing to surrender the prisoner James Killfoyle, to U. S. Marshal M. T. Patrick, on his verbal demand, backed by the verbal order of Governor G. L. Woods, commenced on Monday (4th) and was concluded to-day (8th), Warden Rockwood and Marshal McAllister being held to bail in $1,000 each to await the action of the Grand Jury of the Third District Court.

Briefly the history of the case is this: The prisoner Killfoyle was tried, before Chief Justice Wilson, under the laws of the Territory, on the charge of murder, convicted, and sentenced to the Penitentiary for life, and committed to the charge of Warden Rockwood by order of the court which tried the case. The prisoner was taken in charge by Warden Rockwood, and subsequently committed by him for safe keeping to City Marshal McAllister. The Warden, with other officers, was elected by the last Legislative Assembly, and were duly commissioned by the Acting Governor. The Legislative Assembly appropriated funds to carry on the courts for one year, as usual, and also in case of the Assembly not meeting again for two years. After the close of the Legislative session, Congress passed a law, giving the U. S. Marshal authority to take charge of the Penitentiary, and under instructions from the Attorney General of the United States Marshal Patrick took charge of the United States prisoners. The Attorney General also instructed the Marshal that he might contract with the proper authorities to board and take care of the Territorial prisoners. The Marshal professed to have made a contract with Governor Woods to take charge of and subsist the Territorial prisoners for a dollar and a half per head per diem. Who authorized the Governor to make such a contract, or any contract on behalf of the people of the Territory, who would have to pay the dollar and a half, does not appear, although it is usual for the party which pays the money in a contract to have a voice in making the contract, or in authorizing it to be made. The counsel for the defense held that neither the Warden and Directors of the penitentiary nor the Governor of the Territory had power to make a contract to bind the Territory. Judge Hawley conceded the point respecting the first named parties, but held an adverse opinion respecting the Governor. Counsel for the defense also held that the United States had no right to put its hand into the Territorial treasury without the consent of the Territory. Had the law authorizing the United States Marshal to take possession of the Penitentiary passed before the close of the Legislative Assembly, that body might have made provision for the making of contracts with the United States Marshal for the support of Territorial prisoners. Judge Hawley ruled that the U. S. Marshal had a right ex-officio to the custody of the Territorial prisoner Killfoyle, and therefore that Warden Rockwood and Marshal McAllister had no right to refuse to deliver him up on the Marshal's demand.

This ruling surprised no one, as everybody was satisfied that the whole affair in effect was pre-arranged, and the hearing only a matter of form, this case being only one of a series in the attempt to curtail the liberties of the people of the Territory, and introduce the hands of Federal officials and the "ring" generally into the Territorial treasury. Here lies the animus of this and all like proceedings.

CAMP FLOYD MINES.—From Mr. J. F. M. Rockafeller we learn that the Camp Floyd District is opening rich, and the prospects of the miners are excellent. The Silver Cloud mine has been sunk to a considerable distance; about two weeks ago the owners struck a cave of rich mineral, as rich, our informant says, as he ever saw. Some of the rock will produce as high as $300 per ton. Mr. R. himself is sinking a shaft on the flat. He has reached a depth of about 33 feet, and has struck good mineral. He is putting in a cut for water, and has succeeded in obtaining some; he expects this cut will be a success. Professor Tuck is making arrangements for the erection of a mill in that locality. He expects to have his machinery on the ground in about six weeks. The Professor owns the mine Silver Queen. Altogether the miners feel very much encouraged at their prospects in that district.