

GOVERNOR'S MESSAGE.

To the Legislative Assembly of the Territory of Utah.

EXECUTIVE DEPARTMENT,
Salt Lake City, Utah Territory,
January 11, 1876.

GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

Having completed your organization, you are now to enter upon the responsible duties of legislation. In submitting my Message as the Executive of Utah Territory, I shall venture to hope this will be a harmonious session, and that our joint labors will result in the accomplishment of good, and will promote the welfare of the Territory entrusted to our care.

Many of you have practical experience in conducting public affairs, which will enable you to proceed at once intelligently with the work before you. The length of the session being limited by the "Organic Act," makes immediate action imperative; and though your labors may be onerous, they will be appreciated and profitable, if directed toward measures calculated to give better government to the people.

In presenting the condition of our Territorial affairs and in making such suggestions relative to legislation as the interests of the people at the present time seem to require, I feel it to be a source of satisfaction and encouragement, that the Territory has yielded to the husbandman the past season, something more than her usual amount of agricultural products, and the yield of the mines has exceeded the expectations of their most interested friends.

MINING.

Milling and Smelting are now important branches of the Territory's industries, and it is encouraging to know, though mining is still in its infancy in Utah, the value of the various ores mined the past year amounts to seven million dollars in coin. If doubt ever existed respecting the great mineral wealth of the Territory, it has disappeared, certainly in the minds of those who have given the subject consideration and careful examination. Investments in these properties are already large, and should receive the protecting care of the Legislature, to make them profitable and secure. The discovery of vast quantities of coal in San Pete county, from which coke is already being manufactured, regarded by experts equal in every respect to the Connellsville coke, supplies a want which has been seriously felt, and renders valuable a class of ores, hitherto regarded as worthless. The whole product of the mines is exported, and brings in return actual wealth to the Territory, and there is no class of its people who do not receive some portion of the benefits derived.

GEOLOGICAL SURVEY.

To foster and encourage these enterprises, I advise a geological survey of the Territory, by which we may be able to obtain definite and reliable information, concerning the character and extent of our resources. I would also suggest the establishment of a geological and mineralogical museum, where samples of valuable mineral ores, metals, and geological specimens may be preserved and made accessible, under proper regulations, to all persons. Such an institution would afford valuable information to the public generally, and attract the attention of capitalists to the mineral wealth of the Territory.

THE CENTENNIAL.

This is the Centennial year of our American Independence. Extensive preparations are being made at Philadelphia to celebrate the occasion with becoming ceremonies, and with such a display of American products as will do honor to us as a nation. In this national affair all the States and Territories have been invited to participate, and to contribute whatever may be to their advantage, or will add to the interest of the exhibition. In this matter no action has been taken in the Territory, further than to appoint a commission, who find themselves unable to accomplish the work assigned them without the assistance of the Legislature. These gentlemen represent the different interests of Utah, and are men of acknowledged character and ability, whom I am satisfied will discharge their duties faithfully and

do honor to you. This commission is already at work, and in need of immediate assistance. Delay will greatly embarrass their proceedings, if not altogether defeat the enterprise. The occasion is one which should awaken our patriotism, and kindle within us a Territorial pride to exhibit such an array of our products and industries as will give the millions who assemble at the great Exposition some correct idea of the resources of Utah. I earnestly recommend an appropriation be made by you at an early day in the session, sufficient to defray all necessary expenses incident to the undertaking.

EDUCATION.

I am not aware that I can present the necessity of establishing a system of Common Schools in Utah more earnestly than my predecessors, who have forcibly and eloquently advised it. The great importance of such a system, and the injustice inflicted upon the children in being deprived of free schools, must be apparent to all.

I am informed that a large number of young men and women, born and reared in this Territory, have entered and are about to enter upon the duties of life, and the grave responsibilities of parents and citizens, who are destitute of the simplest rudiments of an education; and that a large number of children now growing up, are also destined to the same fate, unless the Legislature interposes in their behalf, and accords to them, to a reasonable extent, Free Schools. It is a serious thing to allow our children to go forth into the world, unlettered, to cope, in the struggle of life, with the youth from localities favored with all the opportunities of acquiring an excellent education. During the early days of the Territory, circumstances probably existed, affording some excuse for this neglect, but they certainly exist no longer.

The Legislature, in former years, has done something toward establishing a school system, which has been of advantage to many youths of the Territory, and is to be commended for all the good achieved; but the system is too limited, and the money appropriated inadequate to the public necessities. The Legislature left it discretionary, with the different counties, to say whether they would have schools or not, and, as was to be expected, those counties needing schools most took the least interest in them, and one half of the children in Utah have been deprived of any benefits of the law.

So essential are education and intelligence to the establishment of correct habits, good society, republican institutions, and free government, it is hoped the time is not remote when Congress will see to it that some uniform system of free schools is established in all the States and Territories, and make regular attendance of children for a sufficient portion of each year, to ensure a respectable education, obligatory on the part of parents and guardians. This I believe would be wisdom on the part of our government, as a safeguard to its perpetuity, and as a guarantee of those requirements so necessary to every child, of whatever parentage, to make him a useful citizen.

Imbued with the importance of some general system of free schools, adequate to thirty-six thousand children, now estimated to live in Utah, of the proper age to attend school, I respectfully recommend that you seriously consider the subject, and adopt such legislation as shall in your judgment best accomplish the end, so much desired for the common welfare of the Territory.

HIGHWAYS.

Our public roads are in a condition requiring your attention, and probably more specific legislation. A large amount of money is expended annually upon the highways, and still the Territory has little to show for the expenditure. They are insufferable in summer from dust, and impassable during a considerable portion of the winter. The soil of the valleys is such, serious difficulties attend the labor of keeping them up, under the present system of construction and management. Railroads, where they exist, will transport the great bulk of freight, still there will always be a large amount of local freight and local travel to pass over the highways.

I deem it a matter of sufficient importance to the Territory, for you to consider carefully the pro-

priety of such measures, as will provide a fixed sum of money, to be expended each year, sufficient to macadamize in a substantial and proper manner, a certain number of miles of the principal trunk roads, which if done, for a short period of time, will give to Utah highways which shall be monuments of industry and wisdom. Whether this should be a Territorial matter, or left to the respective counties to accomplish, is for you to decide.

It may be well to place the general management of the work under the charge of a Territorial commission, and require a portion of the expense to be paid from the Territorial treasury, while the details of the undertaking be left to the counties, within which the work is to be done.

This may appear a great undertaking, and unwarranted by the present condition of our public affairs, yet I am confident, if this subject is properly studied and rightly understood, a plan can be devised whereby a new system of road building can be inaugurated, which in a few years, say five, will give the people of Utah substantial roads, that will be available the year round, easily and cheaply repaired, the cost of which will be but a trifle more than the money appropriated for roads during an equal number of years just passed. Public moneys are never expended to better advantage, and never more to the satisfaction of the people, than for common schools and public roads. Good public schools and good public roads are the glory and pride of every country possessing them, and when once enjoyed, are never dispensed with willingly. I regard this as an important measure, and shall be pleased to meet the committee having these matters in charge, and give my views more fully on this subject if they shall so desire.

ELECTIONS.

The following is the law governing elections, a portion of which I desire to call to your attention, and ask that it may be revised and its objectionable features omitted: Section 5, of an act entitled "An Act regulating elections," approved January 3d, 1853, provides that "Each elector shall provide himself with a vote containing the names of the persons he wishes elected, and the offices he would have them to fill, and present it neatly folded to the Judge of the Election, who shall number and deposit it in the ballot box; the clerk shall then write the name of the elector, and opposite it the number of his vote."

The registration of votes is not objectionable, but the marking of each vote so as to show for whom each person voted is objectionable and offensive, and the subject of much unfriendly criticism within and without the Territory, and should be repealed. This law is regarded as inimical to republican government, and in the interest of the Church, so potent in Utah, and leaves its members no choice but to vote the ticket prepared for them. I recommend the law be so amended as to secure a secret ballot. Persons wishing to make known for whom they vote, have under all circumstances an opportunity of doing so; other parties wishing to vote secretly should have that privilege. I further suggest that some time be fixed by law, within which votes shall be canvassed, and certificates of election issued, also the propriety of allowing any candidate voted for, or his chosen representative, the privilege of being present at the counting of the vote taken.

STATUTE OF FRAUDS.

There is an entire absence of a Statute of Frauds in this Territory. It is believed that in every State and every Territory of the Union, except Utah, such a statute exists. All these statutes are based, in all their essential features, upon the celebrated English Statute of Frauds, passed in the year 1677. The experience of that country, as well as that of our own, has shown the wisdom of that act. It would be safer, and I advise the adoption of a Statute of Frauds from some other State in the Union, which has received judicial interpretation, rather than attempt a new and untried law.

RE-ORGANIZATION OF JUDICIAL DISTRICTS.

By the "Organic Act," our Territory is divided into three judicial

districts; but it is left to the Legislature to say how these divisions shall be made, and made the duty of the governor to assign the judges, and appoint the times and places of holding court therein. As the Territory is now divided, four-fifths of all the legal business centers in the Third Judicial District, and imposes upon one judge the labor intended for three; which he finds himself unable to dispose of with that dispatch which under other circumstances litigants would have the right to expect. This is a hardship upon the judge of the Third District, who is greatly overworked, and also upon parties who are awaiting the trial of their causes. The present arrangement of districts seems to have been made with a view to an equal amount of territory in each, rather than with reference to population and business, which together, I suggest, should be the basis of your action in re-districting the Territory.

SALARIES.

My predecessor, in his message to the Legislature of eighteen hundred and seventy-four, called attention to the fact that our laws make no provision for compensating Territorial officers. I find no action has been taken on the subject; that these officers are still at the mercy of the Legislature, to remunerate them for services rendered. This is unjust to our public servants, and there should be some provision of law fixing the salary of each, and authorizing them to draw from the Treasury the amount due for services performed, as often as every three months.

DEPOSITORY FOR FINES.

There are now in the possession of the United States Marshal several hundred dollars, derived from fines imposed in the District and Supreme Courts, which he holds subject to the order of the Court or the action of the Legislature. The law should provide some depository for these moneys. Section 28, of Chapter 30, requires fines to be "paid into the County Treasury;" but when the Court is held for several counties, as is now the case, what County Treasury is to be selected?

The Legislature enacting these sections evidently did not take into consideration the District and Supreme Courts. The law should be modified by you so as to remedy this defect?

DIVORCE.

By an Act of Congress, our Probate Courts have jurisdiction over suits for divorce, but Congress intended, no doubt, such jurisdiction should be exercised with caution and carefully guarded by Territorial statutes. The law is defective and should be modified. Section 2, of Chapter 30, Laws of Utah, allows divorce to parties not residing in the Territory, by showing to the satisfaction of the Court, the complainant wishes to become a resident. To prevent an abuse of the law, I recommend the statutes be so amended as to require of the complainant, in any case for divorce, an actual bona fide residence of one year, prior to commencement of suit, in the County or District in which legal proceedings are instituted.

INSANE ASYLUM.

We need a Territorial Asylum for the Insane, which will afford this class of unfortunate people proper treatment, at the public expense, unless they are possessed of sufficient means to defray the necessary charges attending their care. Such an institution is indispensable in every State and Territory, and should be under the control of a skillful physician, who has had experience in treating this class of patients. Humanity and wise government, alike, seem to require of us such a provision, and I suggest some action be taken by you, looking to the establishment of such an institution, even if it be on a limited scale, though adequate to the present wants of our people.

INCEST.

The law is silent on the subject of incest. This is probably an omission on the part of former Legislatures. I call your attention to this fact, and ask you to define by statute what shall constitute incest, make it a crime, and attach to it severe penalties. The law should declare what constitutes a consanguineous marriage, and should make such marriages void in law, and subject the parties there to punishment.

FINANCES.

The financial condition of the Territory is shown by the reports of the Auditor or Treasurer; the copies of which I herewith transmit for your information.

MARRIAGE.

There is no one authorized, by the laws of Utah, to perform the marriage ceremony, neither has there been any legislation on the subject. I am not aware of any other people, civilized or christianized, similarly situated. This is a matter of great importance, and worthy of your consideration. We should have a law that designates what officers may pronounce

the ceremony, and a law that shall throw around marriage all the safeguards necessary to establish and perpetuate the fact of its legality, by means of certificates, publications, and records, usual elsewhere. This involves the welfare of the present generation, and those who are to follow. Posterity should have the means of knowing they are the legitimate offspring of their ancestors. On this depends the right of inheritance and other legacies, as highly prized. This is a subject too sacred to be overlooked, and too important to be neglected; otherwise we may bring reproach upon ourselves, and possibly disgrace upon those who are to come after us.

IRRIGATION.

Some of our City Charters contain provisions respecting irrigation, and there are statutes authorizing and providing for the organization of irrigating districts or companies, but all such enactments are local in their application. There are no general statutes controlling in the matter, and such laws as exist are meagre and indefinite. The matter, in a great measure, is left to be governed by the Common Law, the enforcement of the strict rules of which would, in many instances, work hardship and injustice, as the Common Law did not have its origin or growth in a country requiring irrigation. If some definite legislation is not had, this will be a fruitful source of litigation, between individuals whose interests conflict. In some localities contentions are already arising, and as population increases, and the breadth of land sought to be brought into cultivation and manufactories extend, water becomes of more value, and is contended for more strenuously. It is wise to avoid such evil results by timely legislation. Whatever laws will be enacted on this subject, they will not affect lands of the General Government, except by the consent of that Government; yet, if enactments be fair and just in their terms, no doubt they will meet with the hearty and express approval of Congress.

DESCENTS AND DISTRIBUTIONS.

An Act in relation to the estates of decedents, approved March 3rd, 1852, in 32 brief sections, attempts, but fails, to settle the very important and intricate rights of creditors of decedents, the form, effect, and manner of disposing of property by will, the rights, interests, and inheritance of the children of the deceased, the guardianship of minor heirs, the homestead and other property exempt from liability for the debts of the deceased, and the entire probate practice, by which the estates of intestate decedents are disposed of and distributed. Section twenty-five enacts, "That illegitimate children and their mothers inherit in like manner from the father, whether acknowledged by him or not, provided that it shall be made to appear to the satisfaction of the Court, that he was the father of such illegitimate child or children." Such a provision is simply a premium offered to fraud and perjury, and a great injustice to legitimate and recognized children of a deceased. Some writing or acknowledgment of equal certainty, by the putative father, should, in all such cases, be required. Section 17 offers to executors and administrators every inducement to perpetrate frauds, and sacrifice the property of the deceased for their own benefit. No such power should be given to parties intrusted with the property of others, least of all the estates of the dead. In every civilized state, the descent and distribution of the property of persons dying without will, has been the subject of the most careful legislation, and I suggest a most thorough revision of our laws in this respect.

CRIMES AND PUNISHMENTS.

The punishment attached to many offenses is unmistakably severe, and often fails to accomplish the purpose intended by legislative enactments. The experience of all civilized nations proves, that the certainty rather than the severity of punishment, deters from the commission of crime. If the penalty attached to an act is greater than what the sense of justice and humanity sanctions, juries will evade the law upon any pretense, and often contrary to law and evidence acquit the accused. At the commencement of this century, more than one hundred offenses, ranging from larceny to treason, were punished by death in England. In that country now but a few crimes, and those of the worst character, are punishable with the death penalty; and yet crimes are far less numerous in proportion to population than a century ago. Such is the lesson history teaches, and the legislatures of many of the States have profited by it, and modified with humanity and judgment the severity of their criminal codes. Another objection to our criminal statute is, it omits to define or provide punishment for a large class of actions, which, in other communities, are regarded as crimes, and punished as such. In this catalogue are included offenses against public justice, against the public and safety, against the revenue and property of the Territory, and crime committed through the various instrumentalities of fraud. Our laws are either very meagre, in their provisions, or wholly reticent upon these important subjects of criminal jurisprudence. As there are no common law offenses in this Territory, it is of the utmost importance that the Legislature should define and punish, by a well digested code, the manifold offenses, which unfortunately afflict all communities.

The existing code was adopted in 1852. Utah was then sparsely settled, and the people devoted principally to agricultural pursuits. Since that time mining, manufacturing, and commerce have been introduced, population has increased tenfold. Cities have sprung into existence, and increased facilities for intercourse with the world at large, have changed materially the social condition of our population. A code which may have been amply sufficient for the requirements of society, as it existed twenty years ago, may and must be wholly inadequate to the exigencies of the present. The Act regulating the mode of procedure in Criminal Cases, approved January 21, 1853, is wholly deficient. The indictment, the arraignment of the defendant, the character of the pleadings, the conduct of the trial, the competency of