

GOVERNOR'S MESSAGE.

EXECUTIVE DEPARTMENT,
SALT LAKE CITY,
UTAH TERRITORY,
January 13, 1874.
GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

I congratulate you upon your speedy organization, and accept it as an earnest that we shall have a harmonious and useful session. By the Act of Congress organizing this Territory, the law-making power is vested in the Governor and Legislative Assembly. The responsibility is great, but it is our duty to so use the trusts committed to our keeping as best to promote the general welfare.

There is much that is important for us to do. The length of your session is fixed by law, and we should so use the time allotted to us as to be able to complete the legislation so much needed. Not unmindful, I trust, of that courtesy which should always characterize the official conduct of co-ordinate departments in their relations with each other, I submit that, in my judgment, much of the legislation of this Territory, in the past, has been incomplete and unsatisfactory.

We cannot ignore the fact that there has been much confusion and difficulty in attempting to enforce the laws of the Territory in the past; and that such confusion and difficulty now exist. Much, if not all, of these conflicts and vexatious uncertainties have arisen directly from defective or improper legislation.

It is our imperative duty to remedy these evils; and I trust that we shall be able to bring order out of confusion, and, from the fragments, build a temple so perfect, so complete in all of its parts, as to shield every citizen, and protect alike the rights of all.

By an inspection of the Territorial Statutes, it will be seen that many of the laws, now being enforced, were "Ordained by the General Assembly of the State of Deseret," a quasi organization which existed prior to the organization of this Territory by Congress, but never possessed any validity. True, these laws were "adopted" by a Joint Resolution of the Territorial Legislature. But that is insufficient. It may, with reason, be questioned whether the Legislative Assembly can legislate upon any subject by Joint Resolution. I do not think it can. The Legislature was clothed by Congress with full power to legislate upon all rightful subjects, in the form prescribed by the Organic Act. That is to say that each enactment should be had separately, signed and approved by the Governor, and submitted to Congress for approval. It cannot be claimed that any of these laws "Ordained by the General Assembly of the State of Deseret," and adopted by Joint Resolution, ever received the approval of the Governor; and this is absolutely essential to make them of any binding force and effect. It may be claimed that these are questions to be determined only by the Courts. It is answered that it is the province and the duty of the law-making power to pass upon the sufficiency and validity of all laws, and to make such corrections as, in their judgment, may seem necessary. I therefore call your special attention to all laws of the class referred to, and ask that such as may be deemed essential, be enacted separately, and that all others be declared void.

Education.

In my Message to the Legislative Assembly, at its last session, I urged the early establishment of a good and efficient system of Common Schools, but nothing was done.

Knowing, as I do, that intelligence constitutes the very life of the Republic, the shield of our liberties as a people, I cannot too strongly appeal to you to take such action at this Session, as will secure the object so much desired by all good citizens.

It is not my purpose to specify what a School Law should contain in all its parts, but to leave much to your judgment in the premises.

Every observer of society, every reader of history, every student of political economy knows that educated mind, refined society, and free government are inseparable; and as every citizen alike shares the blessings and benefits of good government, so all alike should be required to contribute to that which gives to it its greatest strength. I

know of no good reason why the rich man, who has no children of his own to educate should not be compelled by law to contribute of his means to educate the children of his neighbor, who is poor, and unable of himself to do so. And so with the man of wealth, who, besides educating his own children, is able to do more.

Justice, good citizenship, every impulse of a higher civilization demands that such should give of their substance to this great work, and I would compel it by law. Let such a system of taxation be adopted as will accumulate a fund, which will be sufficient for the establishment of a thorough system of free schools throughout our borders. Free Schools are among the highest evidences of civilization; and I cannot refrain from expressing the hope that the time is not far distant, and soon will come, when a liberal education will be placed within the reach of every child within the Republic. And I would not have Utah behind in this great work.

Give to the people a thorough system of Free Schools, that our prospective new State may be built upon the solid foundation of intellectual strength. In this connection permit me to suggest, that all moneys arising from fines, and forfeitures, should be given to the General School Fund; thus compelling the violators of the law to contribute to the good of society, by promoting the cause of education.

I call your attention, also, to an act, entitled, "An Act providing for the management of certain property," approved January 20th, 1854, which provides "That the Probate Judge in each County is empowered and required to take possession of all property left by any deceased or absconded person, when there is no legal claimant known, or sufficiently near to see to it in season; and shall forthwith appraise and make two lists of said property, and keep one on file, and forward one to the Treasurer of the 'Perpetual Emigration Fund,' and that at the earliest practicable date, the Probate Judge shall place that property, or the avails thereof, in the possession of said Fund, the value thereof to remain until proven away by a legal claimant, when said Judge shall give an order therefor on the Treasurer."

By an act entitled, "An Act confirming, and legalizing an Ordinance incorporating the 'Perpetual Emigration Fund Company,'" approved January 12th, 1856, said "Company" was placed exclusively under the supervision, management, and control of the "Church of Jesus Christ of Latter-day Saints;" and the entire proceeds of the business of the Company was made to inure to the benefit of the "Perpetual Emigration Fund." Thus, practically, giving all moneys, arising from the estate of deceased persons, in the absence of a legal claimant, to the Church of Jesus Christ of Latter-day Saints, to be used for church purposes. The propriety of so using these moneys is seriously questioned.

Such funds are in the nature of an inheritance, by the people, and as such, belong alike to every person in the Territory. Moneys that cannot rightfully be used to promote the interests of any one class of persons; to the exclusion of any other. Will any one pretend to say that there are not as good reasons to be offered in favor of its use to promote the interest of the Catholics, the Episcopalians, the Presbyterians, the Methodists, or any other denomination of Christians, as can be advanced in behalf of the "Church of Jesus Christ of Latter-day Saints." There can be but one answer—all alike are without any right to any part thereof. It is in violation of the fundamental doctrines upon which the Republic is founded, to permit any Church, or the people of any religious belief, to share any privileges which are not accorded alike to all. It is not sufficient to say that where a large majority of the people are of a particular religious faith, they, possessing the political power, have the right to control the revenues of a country in such a manner as to them may seem just and proper. Governments were not established for the benefit of majorities, but for the purpose of protecting minorities. Individual rights, and not collective rights, constitute the true foundations of all just Governments. Hence it follows that if there is any number of men, how-

ever small that number may be, who object to the moneys acquired in this way, being used by any Church, for any purpose whatever, where they do not derive an equal benefit therefrom, with every other citizen, it is the duty of the law-making power, to correct the evil, and protect them in their rights. And I doubt not you will agree with me, that, for these reasons, the law which places these moneys under the control of a particular Church, should be repealed, and a law enacted in its stead, requiring that all revenues of that nature, when acquired, shall be so used as to benefit every citizen alike.

To accomplish this, I recommend that a law of Escheats be enacted, and that all estates escheating to the Territory, be given to the general school fund. And I also recommend that the "Perpetual Emigration Fund Company" be required to surrender all moneys or other property of that character, now in their possession, to be used for the same purpose.

Inasmuch as the law organizing the "Perpetual Emigration Fund Company" does not require its officers to make any report of its doings to any one, it is impossible for me to communicate to you the amount of the fund so accumulated; but as the Company has been in operation eighteen years, it is fair to presume that a large amount is now on hand, which should be made available, at once, for educational purposes.

The Courts.

That our courts are in a lamentable condition is apparent to all. It is said that the Territorial Marshal is not and cannot be legally elected, under the law, as it now stands. That the act of the Legislative Assembly, creating the office and providing for the filling of the same, is void, for the reason that it is in express violation of the seventh Section of the Organic Act. It is said that the Probate Courts, rightfully, have no equity or criminal Jurisdiction, and yet exercise both. It is said that the jury law is defective, and that no panel can be drawn, under the present law, that will be legal. To all these points I call your special attention.

The rapid growth of the Territory, in population and wealth and enterprise, and the vast amount of capital seeking investment in our midst, make it all important that remedies at law be made speedy and certain. As it now is, properties, of incalculable value, are in constant jeopardy, and citizens of profitable business and honest purpose are subjected to the villainies of the unscrupulous, without the means of protection. We have it in our power to correct these evils, and it is our duty to do so. Let the law which provides for the election of the Territorial Marshal, by the joint vote of the Legislative Assembly, be repealed, and a law enacted, in its stead, which will be in accordance with the provision of the Organic Act. Let the jurisdiction of the Probate Courts be clearly defined, depriving them, by positive enactment, of all equity and criminal jurisdiction, and confining them strictly to Probate business, and let the Jury system be so corrected that a panel can be had whose verdict will be legal and binding. It is unnecessary, I trust, for me to say, that, in matters of so much importance, it is our duty to rise above all preconceived opinions, and labor alone for the public good. That such will be your course of action I have no doubt.

Territorial Officers.

In this connection permit me to call your special attention to the legal status of the Territorial officers. The seventh section of the Organic Act provides that all Territorial officers shall be nominated by the Governor, and confirmed by the Legislative Council.

The Legislative Assembly have provided for the election of all Territorial officers by the joint vote of the two Houses of that body, independent of the Governor. That this is in violation of the Organic Act is evident.

All of the Territorial offices are now filled in accordance with the provisions of the Acts of the Legislative Assembly, and, I doubt not, you will agree with me, that their election, without the nomination of the Governor, in legal contemplation, is a nullity. The officers so elected are the Attorney General, Marshal, Treasurer, Librarian, Auditor of Public Accounts, Superintendent of Public Instruction, Warden of the Penitentiary, and Notaries Public.

We cannot ignore the fact that the question of the legality of the election of the officers enumerated has been a fruitful source of much vexation, trouble and uncertainty, producing distrust and delay in our courts, thereby doing a serious public injury. Our duty is plain. Let all the laws providing for the election of Territorial officers by the Legislative Assembly be repealed, and a law enacted instead, providing for the filling of such in accordance with the requirements of the Act of Congress organizing the Territory.

Penitentiary.

I call your special attention to the condition and management of the Penitentiary. In my judgment its present condition is far from being satisfactory, and I call upon you to make the necessary correction.

The office of Warden of the Penitentiary is one of great responsibility, requiring vigilance, judgment, kindness of heart, executive ability and integrity. Under the direction and control of such an officer, the management of a prison is an easy matter. And in view of the peculiar character of the duties of a warden, I respectfully suggest that as much power over the internal affairs of the prison, in the management of convicts, as good judgment will permit, be conferred upon that officer. Section four of an act entitled, "An Act in relation to the Penitentiary," approved January 20th, 1860, confers upon the "Board of Directors of the Utah Penitentiary" the power to appoint a clerk, overseers, guards, and all other necessary officers of the Penitentiary. The selection and employment of all subordinate officers of the Penitentiary naturally belong to the Warden, who alone can judge of the fitness of persons for these delicate and important trusts. And I recommend that the section referred to be repealed, and that the Warden be made the recipient of such power. And further, by an Act entitled, "An Act further defining the duties of the officers of the Penitentiary, and for other purposes," approved January 18th, 1861, the Board of Directors of the Penitentiary are authorized to lease the Penitentiary, Warden House, and other buildings connected therewith, together with the convicts, to parties who may bid therefor, and in the event that the Penitentiary and convicts are not rented, by the Board of Directors, the Warden is authorized to hire the convicts out. I do not approve of this.

The Penitentiary, and the buildings connected therewith, are the property of the United States, and as such, the Legislative authority of the Territory has no right to authorize any person or persons to lease them, under any circumstances. Nor do I approve of that portion of the Act in question which authorizes the Warden to hire out the prisoners to such parties, and for such purposes, as he may deem proper. The central idea of punishment for crimes, of a lesser grade than those punished with death, so far as it applies to the criminal, in person, is his reformation from the paths of vice, and his restoration to good citizenship. Everything, therefore, which in prison-life tends to degrade and humiliate the convicts should be prohibited by law. Under the present system, convicts have been made to labor upon the streets of our Capital, and in the most public places. Humanity revolts at the idea of compelling human beings to perform labor, as convicts, with a ball and chain, and the uniform of prison life, in the midst of the busy throng, constantly subjected to the gaze of the curious, or in contact, it may be, with relatives and friends. The law allowing such treatment ought to be repealed, and the Warden compelled to keep the convicts in the Penitentiary. Under the present law the singular spectacle is presented of a Penitentiary without a convict in it; the prisoners being kept in county jails, and in such places as the Warden may deem proper.

Merit Marks.

To the end that good behavior may be encouraged among the convicts, I recommend that you establish a system of merit-marks, crediting good behavior, which shall entitle the convict to a deduction of a certain number of days from the term of his sentence. This system has been tried in some of the sister States, and has produced good

results, and I hope it will be adopted in Utah.

Under the law as it now is, ten hours per day, of hard labor, may be exacted of convicts, and while it is admitted that the guilty should be punished for wrongdoing, I am of the opinion, considering the degradations and hardships of prison life, that ten hours' hard labor, for each day, is harsh and unnecessary. The voice of humanity pleads in their behalf. Governments should be generous and kind to the unfortunate ones who fall into the clutches of violated law, and, heeding its appeal, I recommend that the law be so amended as to require only eight hours of labor from the inmates of the Penitentiary. And I also recommend that the Governor of the Territory be authorized and required to inquire into the management of the Penitentiary and its inmates, and all county jails, giving to such officer power to correct abuses, and aid in improving the discipline of such prisons.

Pardoning Power.

The pardoning power, lodged with the Governor by the Organic Act, is one of the most delicate and, at the same time, one of the most important trusts committed to his keeping. And often it is exceedingly difficult for the Executive to determine whether a pardon should be granted, left as he now is, without any means of knowing the nature of the evidence upon which conviction was had. To the end that a helping hand may be extended to the Executive, and justice promoted, I urge you to enact a law, vesting the prosecuting officer, in all criminal cases, when convictions are had, whether for offenses against the laws of the United States or the Territory of Utah, to prepare a full synopsis of the evidence adduced on the trial, and forward the same to the Governor of the Territory, by him to be kept for reference, should applications for pardons or reprieves be made.

Criminal Practice Act.

I call your attention to the fact that there is now, substantially, no Criminal Practice Act in this Territory, and I earnestly recommend the enactment of such a law, governing legal proceedings in criminal cases, as will meet this public want. To facilitate your efforts and lessen your labors in this behalf, permit me to suggest that you adopt the criminal code of one of the sister States, built up and perfected by years of trial and experience, making such modifications and additions as will adapt it to the wants and harmonize it with the laws of the Territory.

Salaries.

An inspection of the laws of Utah discloses the fact, as peculiar as it is unfortunate, that no provision is made for the compensation of Territorial Officers. The idea of service, founded in justice and equity, implies compensation. And this obligation is as strong between the Government and its Officers as between individuals. And in all cases where the services of the citizen are required, it is the duty of the power requiring such services, to fix and determine, in advance, what the compensation shall be. The practice in Utah, hitherto, has been to require the services of Territorial Officers, and fix a salary by appropriation, in the nature of a Relief Bill, after such service has been rendered. This is not just. It leaves the officer, after having given his time and attention to the duties of his office, wholly at the mercy of the Legislature, who may fail, neglect, or refuse to make compensation, leaving the public servant without remedy. It is our duty to make it impossible that injustice may be done; and, to that end, I recommend that reasonable salaries for all Territorial Officers be fixed by law, to be paid from the Territorial treasury.

Militia.

Inasmuch as the militia organization known as the Nauvoo Legion has been a fruitful source of trouble in the past, it is proper that I should call your attention to the law upon that subject, and ask you to make such corrections as the circumstances may demand.

Section 1, of an act, entitled, "An Act for the organization of the Militia of the Territory of Utah," approved January 15, 1857, provides that the "Lieutenant General of the Nauvoo Legion, aided by six or more commissioned officers, of the line or staff, to be selected by him," shall be authorized and empowered "to draft and adopt a system of laws and regulations for the militia of the Territory of Utah," and "to create and fill such offices, as are or may be necessary for its organization," which "laws and regulations" were to be in full force "from and after their publication."

In the month of July, of the same year, the committee, so appointed, "published" a "system of Regulations" and that system of regulations constitutes the only militia law of this Territory. That "system of regulations" was never reported back to the Legislature, never passed the two houses, never received the approval of the Governor. It is simply the unfinished work of a committee, and, as such, can have no binding force and effect. To the end that a militia organization may be perfected, by the authority of law, I recommend the passage of a law providing for the organization of a militia, the legality of which cannot be questioned.

Elections.

The right to vote is the highest manifestation of sovereignty, the most sacred privilege of American citizenship, and