

## UTAH JUDICIARY.

Everybody is satisfied with the proverb that doctors and lawyers disagree—satisfied, we should add, with the truthfulness of the proverb only; but not with the results of that fact; for every development of the proverb is invariably at the expense of some person else than the person who should really bear it. Were the disciples of Blackstone and Aesculapius like other tradesmen, artists or professional men, punished by their own ignorance, their differences might be amusing where they now are painful, and those differences would probably be sheltered by the silence generally accorded to professional incompetency; but, as it is, everybody claims to handle both unceremoniously.

With this view of things, the *Carson Territorial Enterprise*, of March 9th, publishes a communication of two-and-a-half columns' length on the "Utah Judiciary," in which the contention heretofore existing between Judges Flenniken and Cradlebaugh, over the Carson bench changes, into the consideration of who is the rightful claimant for associate-judgeship in this Territory—their Honors Flenniken or Crosby. The consequences of the first contention were high becoming fearfully serious in Carson; what the change of subject may produce here, we claim not to foretell; but as the battle ground has been changed and brought home to us, our readers have a right to know how matters stand, and the progress of after events they can watch for themselves.

The writer of the article in question signs himself "Heath," evidently a legal gentleman, and generally supposed to be the Hon. R. P. Flenniken himself; but that is of little consequence, for the communication and not the authorship is what we design to draw attention to; the supposition of authorship, however, lends interest to the subject.

As our readers have had little interest in Carson proceedings, we have refrained from publishing details of the contention since the arrival there of Judge Flenniken; but for the better understanding of the present we shall have to briefly revert to the past.

For the last six months, the people of Carson have had two federal judges, each claiming the right to dispense the law, in the second judicial district—Judge Cradlebaugh, by virtue of a four years' appointment, which has not expired, and Judge Flenniken, by virtue of an appointment of successor, *vice* Cradlebaugh removed.

The proverbial pugnacity of Cradlebaugh led every person acquainted with the appointment of Flenniken to expect the opposition that the latter has experienced at the hands of his confrere, and though Judge Flenniken was naturally a harmless and unoffending gentleman, the abundance of office seekers, the scarcity of offices, the long and troublesome and even "dangerous journey" to Carson last fall, were facts not lightly to be considered, and not at all favorable to the easy abandonment of the glowing "future," that had tempted his Honor to turn his back upon fireside comforts in Pennsylvania, and to accept office among a people considered every way disposed to regard a federal *protege* "an unnecessary evil," "a public pensioner," and too frequently, we are sorry to add, the rag tag and bob-tail of political parties.

With these varied and weighty considerations, Judge Flenniken met Judge Cradlebaugh's opposition with becoming pluck, and not until the Supreme Court here (the very place where he expected assistance) had abandoned him, did he, in the fistic language of a Carson correspondent, "throw up the sponge," and leave the bench of the second judicial district to the victorious Cradlebaugh.

Ever fickle fortune, as if bent upon exhibiting the frailties of humanity, withheld the slightest indications of her coming choice till the last moment. The conclusion came unlooked for by the people of Carson, and the belligerent judges themselves were surprised. Cradlebaugh had sold his drafts upon government at ten per cent. discount, and had but one purchaser at that, and Flenniken was so certain of victory that his drafts might have been sold at two-and-a-half premium. Partisans on both sides were armed and faced each other in battle array, and were ready to test legality by Colt. The humanity or fear, we don't know which, of Flenniken at last dictated a dispatch to his friends, at a disputed claim, that he was not judge and to obey Cradlebaugh. The dispatch arrived shortly

before the sheriff, and the pistols were unnecessary, otherwise Cradlebaugh would have tested the President's right of his removal in the deadly conflict of two rival mining companies.

The first act of the drama terminating in disaster to Judge Flenniken, so far as his right to the Carson bench was concerned, he very naturally looks around to discover his position, and "Heath" helps him to the conclusion that Cradlebaugh is sustained by the Supreme Court of Utah as a legitimate District Judge, that he (Flenniken) is the other, and only legal Associate Justice in the Territory, and that our Judge Crosby is "one too many."

"Heath" takes up the dates of appointments, and shows that Flenniken was appointed by the President of the United States, on the 11th day of May, 1860, "as Associate Justice of the Territory of Utah," and was forthwith confirmed by the Senate and duly commissioned; that Chief Justice Kinney was subsequently appointed; and that Judge Crosby was not appointed till "somethree months after the commission to Judge Flenniken became a law." "Heath" then reasons:

If, then, the dogma be admitted that the President of the United States, with the concurrence of the Senate (that then was), has no right to remove a Territorial Judge, what position is Judge Crosby occupying? Can he oust Judge Cradlebaugh? No; for his commission bears date anterior to Crosby's appointment. Can he oust Judge Kinney? No; for his appointment is also older than his associate's, besides the specialty of Chief Justice. Can he oust Judge Flenniken? No; for he also is his senior in commission. Does the Organic Act provide for four Judges? No. What then is to become of Judge Crosby? Has he not ruled himself out by his argument on the power to remove? By what standard of morals is he governed in promulgating the doctrine that the President has no right to remove, knowing that he is the junior appointee? and if sincere in his propositions, he is exercising functions, which, to say the least, are in very bad taste.

But for the large demand upon our columns this week for current news, we should have published the argument entire; we are, therefore, forced to state only the points of the argument.

The writer contends that Judge Flenniken's appointment as Associate Justice of the Territory of Utah, though specifying "vice Cradlebaugh removed," did not necessarily include Flenniken's appointment to the Second Judicial District, "as neither the Senate or President has any control in the matter of Districting the Territory, or in assigning Judges thereto," the mention, therefore, of "vice Cradlebaugh removed," being only a statement of the reason for a new appointment of an Associate Justice of the Territory. Cradlebaugh, not being removable, according to the ruling of the Supreme Court here, continues "Heath," Flenniken having the next appointment, there could not possibly be any show of office for Crosby, as "the opinion cannot be entertained for a moment that the President would grant a junior commission to take precedence of a senior, without removing the latter."

"Heath," after sustaining that the Legislative Assembly had the right to assign Territorial District Judges to any particular district "for one year from the date of election, and until their successors are qualified," comes again to Judge Crosby and very seriously alleges that his Honor, after denying the President's right to remove a Territorial District Judge, may be expected next to deny that the Legislature has the right to remove a Judge from the District assigned; that would be, says the facetious "Heath," "in consonance with his legal lore." The writer continues:

It is presumed by the people that Judges are learned in the law (and some can testify they have been badly fooled in such foolish presumption.) Will they, the Judges, enlighten us how a Territorial Judge can be punished for dereliction of duty, if not by removal? They are not Constitutional Judges, therefore not subject to impeachment. By what *MODUS OPERANDI* are they made amenable for their acts, "although their sins be as scarlet?" Do they mean to say the people and the Government of the United States have no remedy? If so, it is time they were disbanded. Does Judge Crosby, in the plenitude of his wisdom, mean to spurn the Judiciary Committee of the United States Senate, and kick into oblivion the advice of the latter, upon the mere appointment of the President, unconfirmed by the Senate; and say the President and Senate are powerless? If so, in the language of Bunbury, "that's wisdom as is wisdom."

"Heath" closes his argumentation with a sly insinuation that the Judges, Kinney and Crosby, constituting the Supreme Court, had decided against the President's power of removal, from the apprehension that a contrary decision might one day bring the argument

home to their own individual cases. For some reason or other he takes especial umbrage at Judge Crosby and adds:

"Had the learned Judge paid a little attention to the books (\* \* \*), he need not have been alarmed at the approaching cloud of Uncle Abe, if it is black; he would have discovered that, although the President has a clear Constitutional right to remove a Territorial Judge, the right is never exercised, without cause, real or supposed; and his appointment conferred by the Senate, will be safe against removal except for cause."

In support of his position, "Heath" cites a number of legal opinions from eminent jurists and Attorney Generals which we regret inability to publish.

It has been surmised that the organization of Nevada settles the difficulty, as it cuts off the Second Judicial District; but that is a very short sighted view of the matter. The bill for the organization of Nevada did not appropriate *holus bolus* the Carson bench and contending Judges. Nevada has its Judges, Utah has also hers, whoever they may be.

Flenniken came here with all the authority that any Federal officer ever presented before taking office; the officers of the government received him as such; the Bar recognized him, and the Legislature assigned him to his District; the Supreme Court at a later date repudiates the President's right of removal and disavows their colleague Flenniken, and he in turn, or "Heath," alleges, as we have shown, that Judge Crosby is a judge too many in the Territory. If Flenniken had an illegal appointment, neither the resignation of Cradlebaugh nor the organization of Nevada can make him ever a legal judge in this Territory, and if his appointment was proper and legal, the aforesaid circumstances change in nothing the position of Judge Crosby, and can never make him anything else than "a judge too many."

We expect that Judge Crosby will make a learned reply to "Heath" unless he "knocks under."

## Telegraph to the Pacific.

Through the politeness of Wm. Bell, Esq., we have had the perusal of a Western Pony letter, dated Placerville, April 3d, by which we learn that Messrs. Wade & Creighton, the agents of the Pacific Telegraph Company, had perfected arrangements for the early completion of the line of telegraph from California to this city.

The writer states that all the California Telegraph Companies had merged in one and would build through to Great Salt Lake City, and the eastern companies would meet at that point.

The Californians seemed all to be highly pleased with the adoption of the Central route for future daily mail and pony express, and, in their usual *qui vive*, were ready on the approach of the first coach to throw up their Kossuths and "Hurrah for the Central Route!"

Snow on the Sierras was reported 20 feet deep; stages were obliged to "hang up" for a week, and the only communication was by telegraph and pony.

## A General Stock Drive.

Arrangements have been made, for a general drive or gathering up of the cattle, horses, mules etc., running on the West Jordan range in this county, the present week, under the superintendence of Messrs. A. O. Smoot, J. C. Little, John Sharp, R. T. Burton, A. Cunningham and T. McKean. The stock on that part of the range, south of the Sand ridge, is to be driven to Wight's fort, on Thursday afternoon, and that on the range, north of said ridge, to the vicinity of Jordan Bridge, on the Tooele road, on the afternoon of Friday.

The details of arrangements are we are unable to give, but understand that every Bishop in the county, has been requested to aid in the matter, and that every effort will be made to have the "drive" conducted in a manner satisfactory to the public, that can be, that no individual may be injured, but many benefited by the operation.

HARRIS "THE SECRETARY."—We have been informed, that among the many aspirants for the gubernatorial chair of Utah, B. D. Harris, the first Secretary of the Territory is very prominent. We wonder, should he get the appointment, and come out here as Governor, if he would remain, and discharge the duties of that office, as long as he did those of Secretary in 1851. Our opinion is, if he must have office, that he had better seek for some position not so far from home.

**KILLED BY LIGHTNING.**—On the evening of Friday week, during the severe thunder storm that swept over Great Salt Lake, Davis, Tooele, Cedar, Utah and Juab counties, four oxen belonging to Mr. L. Stewart, of this city, were killed by lightning, at his ranch, at the head of Utah Lake, near Goshen.

**NEW POST OFFICES.**—The Department has established Post offices and made appointments of Post-masters in Cache county, in this Territory, as follows: At Logan, William B. Preston; Mendon, James G. Willie; Wellsville, William Maughan; Providence, Robert H. Williams; Hyrum, Calvin Bingham, and at Millville, Joseph G. Hovey.

**UNION ACADEMY.**—The next term of this popular Institution, in which are taught, Arithmetic, Geography, Grammar, Algebra, and the various branches of mathematics, will commence on Monday next.

## Married:

In this city, April 1st, 1861, by Bishop Fettegrem, NIELS OGORRD and SARINA SURRENSEN.

At Kaysville, by Bishop Allen Taylor, Mr. ALBERT DOUGLAS DICKSON and Miss NANCY ELIZABETH SHIPLEY, both of Kaysville.

Also, on the 1st inst., at Kaysville, by Bishop Allen Taylor, WILLIAM OGDEN and SARAH WEBSTER.

## Died:

In G. S. L. City, April 6, 1861, SARAH MELISSA, eldest daughter of Henry and Sarah Ann Heath, aged 9 years, 2 months and 3 days, of putrid soar throat.

## New Advertisements.

## NOTICE.

I WILL SELL Pure FLAX SEED OIL for five dollars, *ta cash*, a gallon; and will say two dollars and fifty cents, in cash, for a bushel of good flax seed; and will exchange oil for flax seed, at the rate of one half gallon of oil, for one bushel of flax seed. Persons wishing to buy, sell or exchange, as aforesaid, can be accommodated by calling upon Archibald N. Hill, at the General Tithing Office, in G. S. L. City. HERBER C. KIMBALL. 6-11

**WANTED IMMEDIATELY,**  
A GOOD PRACTICAL GARDENER. — Apply to Wm. Wagstaff, at his nursery, 34 Ward, on the State Road.

## WANTED,

For the Deseret Agricultural and Manufacturing Society, all kinds of CHOICE SEEDS (native and imported). Please forward to Wm. Wagstaff, or to Bishop Hunter.—6-2

**MILL CREEK AND COTTONWOOD.**  
TAKE NOTICE.—As there are STUD COLTS or Ridges, or both, running on the above-named ranges and vicinity, the owners are requested to take care of them forthwith, or I shall be constrained to avail myself of the law of the Territory to clear the ranges of such animals.  
DAVID BRINTON.  
Big Cottonwood, April 6th, 1861.—6-1

## ESTRAY STEER.

I HAVE in my possession a four years old roan STEER. It has an underslit in the left ear, but no brand marks are visible. The owner can have the property by proving his claim and paying expenses.  
6-2 FRANCIS LEE, Tooele City.

## ESTRAY.

CAME to my yard last summer, one red three-year old STEER, with a Spanish brand on left hip, white on belly and bush of tail, hind legs white. The owner can have him by calling at my residence and paying charges.  
6-1 FRANCIS LEE, Tooele City.

## LOOK HERE.

I WILL PAY BOOTS, SHOES or LEATHER for LUMBER, SHINGLES, LATHS and ROCK, suitable for building.  
WM JENNINGS.  
G. S. L. City.—6-11

## ESTRAY.

A Two-year old HEIFER of red color, with a little white in the back and belly. She is with calf, and has a piece cut out of the right ear; also a slit in the left ear, with no other visible marks. The owner can have the property by proving his claim and paying expenses to  
6-1 THURSTON SIMPSON, 15th Ward.

## ADMINISTRATOR'S NOTICE.

NOTICE is hereby given to all persons having CLAIMS or DEMANDS against the Estate of JOHN SLADE, late of Great Salt Lake county, deceased, to present the same to the undersigned administrator of said estate for settlement, without delay, and all who know themselves indebted to the said estate are requested to come forward and cancel said indebtedness, as I am anxious to close up all matters connected with the estate at the earliest practicable date.  
6-4 ROYAL BARNEY,  
Administrator of the Estate of John Slade deceased.

## \$100 REWARD.

STOLEN, from the stable of the Subscriber, on the State Road, about two and half miles south of G. S. L. City, on Sunday night the 7th ult., a Chestnut Sorrel MARE, eight years old, heavy mane and tail, shod, hind shoes loose, no brand.  
Also a bright Sorrel HORSE, about six years old, not shod, collar marks, a few white hairs on the top of the neck.  
The above reward will be paid for the apprehension of the thief or thieves, and recovery of the horses.  
6-2 TITUS MOUSLEY.

## NOTICE.

WM. HOWARD respectfully informs his friends and the public in general that he has opened in connection with his Boot and Shoe Manufactory, a

**SADDLE AND HARNESS SHOP,**  
AT THE OLD STAND OF THE "PONY EXPRESS," EAST TEMPLE STREET,  
where will be found a variety of Plain and Fancy Saddles and Bridles, and all other articles in connection with the trade.  
In the BOOT and SHOE line he is prepared to fill orders to any amount, and on the shortest notice, for all of which he will take in exchange all kinds of Hides, Sheep and Dog Skins, Oil, Tallow, Butter, Pork, Beef, Flour, Bark, etc., and at the highest market price. All work done on the premises warranted to give entire satisfaction.  
Call and see us at Malliner's Old Stand and at the "Pony Express," East Temple street. 6-12