That is to say, that the justice will hear the case without the expense to litigants of process, but if the losing party is dissatisfied, and declines to voluntarily comply with the decision of the justice, then the case must proceed as if no hearing had been previously had.

The memorialists' quotation from section 13, viz.—

"That when the amount exceeds $100 the justice shall have the same powers as other courts of arbitration, and shall have power to enforce his decision thereon, which decision shall be the end of the controversy"—

is complete.

In the statute, section 13, page 33, General Laws Utah, the language quoted above is prefaced with the following sentence:

"The jurisdiction of justices extends to the limits of their respective counties, and within that limit it extends to all civil cases (except when the question of title to and boundaries of land may arise) when the amount in controversy does not exceed one hundred dollars, *and by the wish and consent of parties* may be extended to any amount: *Provided*"—

And then the language quoted by the memoralists follows.

The difference between the law and the memorialists' statement of the law is, briefly stated, thus:

By the law, justices can act as arbitrators to any amount, and enforce their decisions, only by the wish and consent of the parties.

By the memorialists' statement of the law, justices can act as arbitrators to any amount, and enforce their decisions, *without* the consent of the parties.

Which makes all the difference.

I must again recall the attention of the committee to the fact that this law, as well as all the other laws thus far referred to in the memorial, is repealed by the act of 1870.

I refer again to the memorial, and find that the next point of attack is the jury system of the Territory. The memorialists say:

"The Supreme Court of the United States having recently, in the case of Clinton *vs.* Englebrecht, affirmed the binding force and validity of the present jury law of this Territory, especial attention is called to the complications and burdensome provisions of this law. Without entering into an elaborate detail of its objectionable features, we will simply state that the Mormon element have the exclusive control of the selection of jurors in our courts of general jurisdiction, and that for the improper exercise of this control, for the prejudices and partialities of the element aforesaid against other portions of the people of said Territory, there is no remedy or redress whatever.

"Furthermore, it is our conviction that under the present system, carried out with the purest motives and best intentions, the machinery (so to speak) of the system is so complicated, and in different parts has to be worked by so many different persons, that to obtain a jury panel in any case not justly subject to challenge will be very difficult; that in a great majority of cases such challenge could be properly interposed for defects occurring in simply carrying out or attemptting to carry out he provisions of the law.

"And this being so, the right of trial by jury in this Territory is in effect denied, and criminals go unpunished and the rights of the people unprotected."

The mode of obtaining grand and petit jurors in Utah is the same as that pursued in many parts of the country. The county court of each county, at its first session in each year, selects fifty names from the assessment roll, of persons eligible as jurors. These names are written on slips of paper and deposited in a box, the boxes shaken up, and the jury panel drawn therefrom promiscuously. What there is in this plan that is either unusual, unfair, or complicated does not appear. The memorialists do not enlighten us on these points. On the contrary, they "decline to enter into elaborate details."

It is doubtless true that "the Mormon element have the exclusive control of the selection of jurors in our courts of general jurisdiction." But inasmuch as nine-tenths of the persons eligible to jury duty are Mormons, it is difficult to comprehend how this evil, if it be an evil, can be remedied, without either converting or disfranchising the Mormons. It is scarcely within the scope of Congressional power to accomplish the first, and it certainly does not seem right to perpetrate the second. To select the jurors exclusively from non-Mormons, to confine the jury duty of the country to less than one-tenth of its citizens, would be as onerous on those included as it would be unjust to those disfranchised. I venture the assertion that no jury list has ever been made out in Utah on which the non-Mormon element has not been accorded a larger representation than its numbers entitled it to expect. Even the memorialists do not assert, except by inuendo, that this "Mormon control" has ever been improperly exercised. There is no complaint among litigants that it never has been so exercised, and one of the signers to the memorial, Mr. R. N. Baskin, himself the right arm if not the brains of the anti-Mormon party of Utah, testified before the House Territorial Committee of the Forty-first Congress, "that in cases where their religion was not in issue he never met fairer juries than the Mormon juries."

It follows as a correlative proposition that in cases where their religion was at issue—for instance, in a trial of an indictment for polygamy—Mormon jurors would not be "fair;" that is to say, their peculiar views and prejudices would prevent a verdict of guilty. Admitting frankly that this may be so, I ask if the remedy proposed is not worse than the disease. Here you have a condition where nine-tenths of a community entertain views that preclude them from doing their duty as jurors in a special class of cases. Was not this the case in most of the Northern States with respect to the fugitive-slave law? Was not this the case in the Southern States with respect to the crime of treason? If Congress declined to enact a law that would have enabled Chief Justice Chase to pick out a jury that should convict Jefferson Davis, of treason, ought it now to enact a law to enable Chief Justice McKean to pick out a jury to convict Brigham Young of polygamy? It seems to me that the law would be a greater offence against the spirit of democratic republican institutions than is the existence of the evil thus sought to be reached. It were better to leave the traitor to the judgment of history, and the polygamist to the encircling and assailing influences of monogamic civilization.

And even if it should be decided to permit juries to be packed in order that polygamists may be convicted, I submit that such an extraordinary statute should not be permitted to extend its operations one inch beyond the limits of its necessary domain. I submit that such a law should be made to apply only to trials for polygamy, and that all the wealth, the accumulations, the growing industries of 140,000 people should not be thus placed within the grasp of a few men, who might use their power for the basest and most sordid purposes.

The memorialists further say:

"We submit further that in providing for the filling of offices of territorial marshal, (Laws of Utah, page 38,) territorial attorney-general, (page, 38,) territorial auditor, (page 75,) territorial treasurer, (page 77,) territorial school superintendent, (page 221,) territorial surveyor-general, (page 77,) territorial wardens of penitentiary, (page 96,) territorial directors of penitentiary, (page 96,) territorial notaries public, (page 214,) by the joint vote of the legislative assembly, is deliberate violation of the seventh section of the organic act, which provides that all such officers should be appointed by the Governor, by and with the advice and consent of the territorial council."

The seventh section of the organic act above referred to reads as follows:

"Sec. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and legislative assembly of the Territory of Utah. The Governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and in the first instance the Governor alone may appoint all said officers, who shall hold their offices until the first end of the first session of the legislative assembly, and shal lay off the necessary districts for members of the council and house of representatives, and all other offices."

The language of the organic act is not especially lucid; but taken together and interpreted fairly, I submit that it means that pending the action of the legislature the Governor shall appoint all public officers in Utah, but that the legislature might provide by law for filling their offices—after the first appointment—either by election or appointment. The first legislative assembly did provide by law for filling those offices "by election," viz., by the election of the legislative assembly. The first Governor of Utah, who might have vetoed the law, approved it. It has never been annulled or disapproved by Congress. These offices have been thus filled for twenty years under this law, and never by dishonest or incompetent officers, and it is rather late in the day now to cite this law as an evidence that the Utah legislature is "inimical to the Federal Government."

The next count of the indictment of the memorialists is in the following language:

"We also submit that the act of February 12, 1870, prostitutes the right of suffrage by conferring it on an alien woman, without even quali cation of time of residence, but on the sole condition that she become what is termed the 'wife' of a 'citizen,' without any limit to the capacity of such 'citizen' for this new process of naturalization. When it is remembered that most of these women, by assuming domestic relations which are in violation of the laws of Congress, could not become citizens by naturalization in the courts, the purpose of this summary process of making legal voters of them is apparent."

I am not here to defend either the doctrine of female suffrage generally or the Utah female-suffrage law specifically, but in answer to this section of the memorial I beg leave to quote from a speech of the Utah Delegate, Hon. W. H. Hooper, delivered in the United States House of Representatives on the 29th of January last. Mr. Hooper says:

"The legislative assembly of Utah adopted female suffrage. The gentleman from Montana sees in this another monstrous instance of Mormon craft. The Mormons feared the loss of power, he says, by the gradual change of population, and increased their voting power by this method. If they had adopted it for the purpose stated by him, it would not be discreditable to them. But though the legislature of Utah are far-sighted men, in this instance he gives them credit which they do not deserve. For the purpose of increasing voters, that plan had not occurred to them.

"What are the facts, sir, connected with this movement? When the legislative assembly which passed the female-suffrage bill met, no less than two bills were before Congress having for their object the enfranchisement of the women of the Territory of Utah. Their friends argued that the enactment of such a law would practically solve the 'Mormon problem.' 'Give woman the ballot,' said they, 'and you bestow upon her the power to regulate the marriage relation and to emancipate herself from the thraldom imposed upon her in Utah.'

"To convince the country how utterly without foundation the popular assertions were concerning the women of the Territory, some members of the legislative assembly were in favor of passing the law referred to; others favored it, convinced of its propriety by the arguments of the friends of that great political reform. The bill became a law. The gentleman will not consent that the legislative assembly in this action shall be credited with correct motives for what even he does not deny is a correct thing. Sir, what is the real objection to this measure? Is it because the women vote, or because they do not vote as the gentleman would have them?

"The gentleman from Montana makes an assertion concerning the ages of those who vote. I might contradict it, and say that he is misinformed; that in this, as in other instances, he has believed the tales of slanderers. But let us examine this statement, and see how much foundation of truth it has. At the election held last August in the Territory for Delegate to Congress and members of the legislative assembly and other officers, the total vote polled was 22,913. Without any doubt Utah at that time had a population of at least 120,000. But suppose we throw off five thousand and call her population 115,000, what proportion does her vote bear to this? Not one-fifth. Her adult citizens of the United States of both sexes, all having the right to vote, and yet the vote only reaching 22,913! I ask, sir, where is the evidence in these figures of such an abuse of the ballot by women as the gentleman would have you believe exists there?"

I return to the memorial. It says:

"In support of the third, fourth, and eighth propositions we advert to the absence of any statute of frauds, of registration, of inheritance, or marriage. Such an omission cannot simply be an oversight, but must have been intentional and deliberate. We submit that the ordinary exigencies of a civilized community demand legislation upon these subjects."

The absence of a law for the registration of voters is not remarkable. This political reform has not yet been extended to all the States in the Union. The absence of a statute of frauds, of inheritance, or marriage, has as yet worked no injury, and no serious inconvenience to any of the people of Utah. It would have been better certainly if the Utah legislature had found time in their limited forty-day sessions to consider and enact such statutes, but the common law is ample enough to supply their absence; and although no Utah legislature has ever formally adopted the common law, it has been ruled by the supreme court of Utah Territory that it exists there, and is in full force and effect.

It is further asserted by the memorialists that the Territorial legislature—

"Has, in terms and practice, cantoned out the legislative authority to municipal corporations—and so spread and extended are these corporations that they include almost all the settled lands in the Territory—and invested them, by elaborate charters, with the most absolute and monstrous powers for oppression and tyranny. The municipal governments established by it, and spread over the habitable perts of the Territory, have established and put in force elaborate codes of laws, mostly uniform, but most oppressive, vexatious, and arbitrary in their nature, and far more so in their execution by means of tribunals unauthorized by law."

The charters of all the municipalities of Utah are similar in letter and spirit. An examination of one will be sufficient to test the accuracy of this last statement of the memorialists. I have examined the charter of Provo city, to be found on pages 120, 121, 122, 123, 124, and 125 of the General Laws of Utah, and I submit as the result of my labors the following:

The inhabitants of Provo are constituted a body corporate and politic, with perpetual succession, with power to sue and be sued, and purchase, hold, and sell property for the benefit of the city.

The municipal government is vested in a mayor, aldermen and council, who are to be elected by popular vote, and hold office for two years.

The city council is to have stated, and special called meetings, and may appoint the necessary city officers.

The mayor and aldermen are to be conservators of the peace, with the same powers and jurisdiction as other justices of the peace.

The city council have power to levy and collect taxes, annually, not to exceed five mills on the dollar for contingent expenses, and five mills on the dollar to open, improve, and keep in repair the streets.

They are empowered to make proper sanitary regulations, license merchants, regulate slaughter-houses, breweries, etc., pass such ordinances, not contrary to the Constitution and laws of the United States and laws of the Territory, as may be necessary to provide for the health and peace of the city, and to inflict punishments for violating such ordinances, not exceeding one hundred dollars fine or six months' imprisonment, etc., etc.

I submit, that there is not an incorporated city in the United States with less power than these Utah municipalities, or where local government is more economically and democratically administered, or where taxation is less onerous, or rights of person and property more secure.

Against the sweeping assertion that "these municipal governments have established and put in force elaborate codes of laws, most oppressive, vexatious, and arbitrary in their nature," I interpose a sweeping denial, and I call your attention to the fact that the memorialists have not attempted to substantiate this section of their indictment with a single citation from any of the municipal codes so earnestly denounced. Why there is such an omission, such a grievous hiatus, such a failure of evidence to sustain the allegations of the bill, I cannot conjecture. Surely the imagination and the industry of the writer of that memorial must have suddenly failed him. The man who could invent laws, and garble and amend the statues of a Territory to fit the exigencies of his statements, should have been equal to the emergency of supposing a city ordinance.

I come now, Mr. Chairman, to the accusation of the memorialists that the—

"Probate courts are invested with appellate as well as general original jurisdiction, criminal as well as civil, in chancery as well as at law, to the exclusion of the district courts. By these means there have been established and vigorously maintained in Utah an independent system of laws and an independent judiciary, to which all the local authorities and local ministerial officers are wholly subservient; among whom are those invested with the power to select and summon all jurors, grand as well petit, for the administration of territorial laws in the district courts. Hence the administration of justice has fallen into utter disorder and confusion.

"Persons accused of crime and committed to custody by the district courts or judges are discharged on *habeas corpus* by the probate judges. The probate courts, assuming as law that all acts purporting to confer jurisdiction upon them not disapproved by Congress are approved by Congress, are exercising all over the Territory unlimited jurisdiction, original and appellate, criminal as well as civil, in chancery as well as at law, which these various acts assume to confer. In them equity is blended with remedies at law in one and the same case; grand juries are empanneled, indictments found and tried for every grade of crime. In some cases prisoners under accusation or trial upon such indictments have been discharged or held to answer, as the showing required, before district courts by district judges on *habeas corpus*. And in all this confusion, though often decided, no question is determined, but everything is moving on in the full tide of disorder, toward a violent collision which must result if Congress fails to interpose by appropriate legislation."

And to all this I reply that the probate courts of Utah are indeed made courts of record, and given original civil and criminal jurisdiction, with chancery powers as well, by the act of the Territorial legislature. If this be a crime, the Territorial legislature of Utah has perpetrated it. If it be treason against the United States, they are guilty of it. If it has tended to bring the administration of justice into utter disorder and confusion, the Utah legislators are responsible. But, before we condemn them utterly, let us examine both the cause and the effect of this "hostile and subversive legislation."

The tendency of the American mind is toward self-government. This tendency is aggravated rather than reduced by a residence in any of the Territories. Officers and judges, who are elected at home, have a greater degree of direct responsibility to the people whom they rule than officers and judges who are appointed from abroad, and there never was a Territory where the people were so well contented with their imported officials that they did not seek to enlarge and aggrandize the powers of those whom they were permitted to choose for themselves. If Utah has exceeded all other Territories in her efforts in this behalf, the reason has doubtless been that Utah has had less cause for delight in her imported officials than have the other Territories.

But if Utah is to be denounced as disloyal, because she has attempted to make chancellors out of her probate judges, then let the denunciation be visited upon her neighbors, for they are also offenders. I beg permission, in this connection, to quote again largely from the speech of the Utah Delegate to which I have already referred.

Mr. Hooper says:

"The organic acts of Utah, Nevada, Idaho, and Montana are in respect to the organization of courts and the definition of jurisdiction, precisely similar, not only in spirit but in text. All use the same language.

"The judicial power of said Territory shall be vested in a supreme oourt, district courts, probate courts, and in justices of the peace.' * * * 'The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law,' &c."

"And with respect to the power of the Territorial legislative assemblies, the organic acts of these four Territories are again precisely the same, for in each it is said—

"That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act.'

"Starting with similar organic acts, we will examine the laws of the different Territories, and see if Utah is alone in the monstrous usurpation, the unheard-of iniquity charged against her, of clothing probate courts with original common law and chancery jurisdiction.

I refer to the laws of Nevada Territory for 1861, section six hundred and eight, page 418, and to sections one and two, page 82 and 83, of the laws of 1862, and I find that the probate courts were given—

" 'Original civil jurisdiction of actions to enforce mechanics' liens, of proceedings in cases of insolvency, of proceedings in divorce cases, of all civil cases in which the amount in controversy does not exceed $500, or which involves the title and possession of real property situated in the county, not exceeding $500' * * * * 'And their jurisdiction shall be co-extensive with the jurisdiction of the district court,' etc.

"Section six hundred and twenty-three, page 194, of the laws of Idaho Territory for 1864, provides that—

" 'The probate court shall have concurrent civil jurisdiction with the district court of this Territory of an action to enforce the lien of mechanics and others, and in all civil actions when the amount in controversy shall not exceed $800' * * * * 'The probate court and the judge thereof shall have power at chambers to try and determine suits of *mandamus*, *certiorari*, and *quo warranto*, and to issue all writs necessary or proper to the complete exercise of the powers conferred upon it by this and other statutes, and, in the absence of the district judge from the county, to issue writs of *habeas corpus* and injunction.'

"Section six hundred and twenty-nine of the same act provides that—

" 'In all civil cases within their jurisdiction, the probate courts and the judges thereof shall have the same power to grant all orders, writs, and processes which the district courts or the judges thereof have power to grant within their jurisdiction, and to hear and determine all questions arising within their jurisdiction as fully and completely as the district courts or the judges thereof have power to do under the laws of this Territory.'

"Sections four hundred and eighty-two and eighty-three, page 139, of the laws of Montana Territory, 1864-'65, provide that—

" 'The probate court shall have concurrent jurisdiction with the district court in all civil actions where the amount in controversy shall not exceed $2,500. The probate court and the judge thereof shall have power at chambers to try and determine