sults 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 injunctions.'

"Thus it will be observed that the probate courts of three Territories, Nevada, Idaho and Montana, were given common law and chancery jurisdiction, limited in some extent it is true, but none the less complete within its limits. The common-law jurisdiction was limited in Nevada to $500, in Idaho to $800, in Montana to $2,500; but if the territorial legislative assemblies of these Territories had the power under the organic act to grant concurrent or coextensive jurisdiction to the probate court at all, they might have enlarged that jurisdiction to $10,000,000, or made it unlimited, as readily as to place limits to its exercise.

"The power once ceded to pass the law, and the remainder is but a matter of legislative discretion. So with respect to chancery jurisdiction. Nevada limited the chancery jurisdiction of her probate judges to divorce cases, proceedings in cases of insolvency, and the enforcement of mechanics' liens. Idaho and Montana go further, and permit their probate judges to grant writs of injunction when the district judge is absent from the county. Montana has three district judges and nine counties. Unless her district judges are ubiquitous, it follows that in Montana there must constantly be at least six probate judges who are clothed by her Territorial legislature with all the great powers of chancellors, who are clothed with the highest function of all chancery jurisdiction—the power to issue a writ of injunction.

"I can find no words of censure for the Territorial legislatures which thus endeavored to provide the people with local courts of jurisdiction. I can see no defiance of the United States in this character of legislation, nor any harm to any person on earth. In all these Territories, Utah, as well as the rest, the right of appeal from the probate to the district court is accorded, and the aggrieved party can always avail himself of the distinguished legal abilities of the district judges if he is not satisfied with the probate court decision."

Let me add, Mr. Chairman, that the right of the legislature of Utah to vest such powers in the probate courts has been so questioned by lawyers and denied by Federal Judges that no practical use is made of the grant.

In criminal cases the district courts promptly release on *habeas corpus* any person imprisoned on a judgment of a probate court.

In civil cases the defeated party has but to sue out a writ of error, and the district court will set aside the judgment on the ground that the probate court has no jurisdiction. No lawyer, except for the purpose of making a test case, will commence an action in the probate court, whose jurisdiction is denied, when he can bring the same case in the district court, whose jurisdiction is unquestioned. As a consequence, there are no civil cases in the probate courts of Utah, and the "chancery powers" of probate courts are never invoked.

There is no "disorder," nor is there any danger of a "violent collision," for the simple reason that the power of the district court has never been questioned, and no probate judge has ever disregarded its decrees.

The memorialists say:

"Persons accused of crimes, and committed to custody by the district court or judges, are discharged on *habeas corpus* by the probate judges."

All that can be said in reply to this statement is, that it is not true, and as evidence that it is not true, I invite your attention to the fact that the memorialists have not cited any instance of the kind.

I believe that there is one case of the kind, and only one. Brigham Young was held in the custody of the United States marshal by order of the district court. While in custody the Supreme Court of the United States rendered a decision in the case of Engelbrecht *vs.* Clinton, which established the proposition that the United States marshal who held him in custody was not an officer of the district court at all, and that the grand jury which indicted him was an illegal body. The decision was announced by telegraph; its authenticity and purport were notorious facts. Even the acting United States district attorney of Utah felt impelled to apply to the acting district judge for Mr. Young's discharge, but the district judge declined to order his discharge, on the ground, I am informed, that no certified copy of the decision of the United States Supreme Court in Engelbrecht *vs.* Clinton, had been received. It would have taken a week, perhaps longer, to obtain the certified copy. The old gentleman was tired of his winter's confinement, and so he *habeas corpussed* the United States marshal before the probate court of Salt Lake county, and the probate judge ordered his discharge, to the great delight, doubtless, of the United States marshal, who obeyed the order.

If the probate court had no jurisdiction to order Mr. Young's discharge, the United States marshal had no jurisdiction to keep him in custody, and no great harm was done.

With this exception, I repeat that there is no instance of a probate judge discharging a person committed by a district judge.

The memorialists further say that the Utah legislature—

"Has assumed to grant and parcel out to a few favorites the timber in the mountains and kanyons, and also the usufruct and control of streams of running water in the Territory, rendering the body of the people dependent therefor on them."

Mr. Chairman, these grants have all been repealed or have expired, or are abandoned, and while they were in existence, Mr. Hooper says—

"No attempt was ever made to maintain ejectment upon them in any court, probate or district. They were never esteemed as of any particular value; no settler, Mormon or non-Mormon, was ever excluded from land by warrant of their authority. There is not a foot of land held in Utah under them. They belong to the past, and there never was an hour in that past when any person on earth was injured by them." * * * * "I challenge the world to present one single authenticated case of a would-be settler being prevented from settlement by Mormon grants or Mormon interference. That there are but few non-Mormon farmers in Utah is probably true. The arid, treeless plains of Utah, redeemed to gardens only by the construction of costly ditches and the ceaseless toil of irrigation, presented few attractions to those farmers who were free to choose either the genial climate of California, or the broad and fertile acres of Iowa or Nebraska.

"Nothing but a desire to reach a spot where they could enjoy their religious faith unmolested could have induced any considerable number of persons to come to Utah at all."

The memorialists have cited at length a statute authorizing the probate judges to take charge of the property of any deceased or abscondent person, and designate this statute among the anomalies of legislation. It is anomalous in that it ranks abscondent persons with deceased persons. So far as the statute applies to persons dying intestate, without heirs or creditors, there is nothing anomalous in it. It finds its parallel in every locality where there is such an officer as a public administrator. To class an abscondent person with a deceased person is perhaps a novelty in legislation, but I am not therefore willing to condemn it as either unjust or unwise. The abscondent is dead to the community from whence he absconds, and it is better for him, his heirs or creditors, that his property should be cared for by a public officer, rather than it should be left to the prey of the first casual appropriator. To place the proceeds of the sale of such property, for safe keeping, in the hands of the treasurer of the perpetual emigrating fund, is perhaps quite as just to the community, and as just to the abscondent, or the estate of the deceased, as if those proceeds were absorbed in the vortex of "fees" that usually whirls around escheated estates, or turned over to some "fund" that should clutch it and assimilate it, as the devil-fish gathers sustenance for his embracing but imperceptible film.

The statute of limitations, to which the memorialists refer, differs in no respect from other statutes of limitations. It is prospective in its operations—necessarily. It would be difficult for even a Utah legislature to pass an *ex post facto* law, or a law that should impair the obligation of contracts.

Among the last accusations of the memorialists I find the following:

"The mayors of corporations are authorized to exercise the right of eminent domain (an attribute of sovereignty) by taking private property for public uses anywhere within their corporations without any check to oppression. (See charters of Salt Lake, Provo, &c.) The by-laws and ordinances of these cities authorize the seizure and destruction of the property of the citizens. The case of Englebrecht *et al. vs.* Clinton *et al.*, recently before the United States Supreme Court, originated in a proceeding of this kind."

As an answer to these broad and unsubstantiated assertions, I refer to section 76 of Great Salt Lake city charter, page 118, General Laws Utah:

"When it shall be necessary to take private property for opening, widening, or altering any public street, lane, avenue, or alley, the corporation shall make a just compensation therefor to the person whose property is so taken, and if the amount of such compensation cannot be agreed upon, the mayor shall cause the same to be ascertained by a jury of six disinterested men, who shall be inhabitants of the city."

And the only "property of the citizens" which can, under the charters, be seized and destroyed, is described in section 22, page 115, General Laws Utah, as "all instruments and devices used for the purposes of gaming."

It is submitted that the specifications of the memorialists fail to sustain their charges.

They allege that the legislation of Utah has been inimical to and subversive of the Federal authority.

The laws they cite in support of this allegation either never existed or are repealed.

They assert that the Utah legislature has neglected to establish a wholesome general system of laws.

The civil practice act of 1870 is a standing refutation of this charge.

They insist that the municipal charters are extraordinary grants of power, and the municipal ordinances oppressive, vexatious, and arbitrary.

The charters and ordinances prove to be similar to those of all other American municipalities, and the administration of justice and public order proves to be equal, economical, and usual.

They declare that there are in Utah two hostile jurisdictions.

It appears that there is in every case a right of appeal granted to the Federal courts, and no instance of a clashing of jurisdictions.

I conclude this portion of my argument by inviting your attention again to the fact, that the memorialists have based their demand for Congressional legislation with respect to Utah upon the basis of conditions which—if they ever existed—have now passed away.

HOUSE BILL 3,791. PRINTERS' No., 3,073.

The bill proposed by Mr. Merritt is based upon the complaint of the memorialists, but it goes beyond their complaint, and proposes to remedy some things of which the memorialists do not complain.

The first section of the bill proposes to destroy at one blow every sheriff in Utah. It makes the United States marshal the sheriff of twenty-one counties and three judicial districts, and gives him almost unlimited power without exacting from him any bond or security whatever. It requires each of his deputies to give a ten-thousand-dollar bond to the marshal, "conditioned for the faithful discharge of their duties as such deputy"—but the marshal gives no bonds, and furnishes no security to anybody.

"The river Rhine it is well-known
Washes the city of Cologne—
But tell me, oh, ye gods divine,
What power shall wash the river Rhine.'

The second section abolishes all county and prosecuting attorneys, and makes the United States district attorney the prosecuting attorney of the Territory. No bonds are to be exacted from him, or from the assistants whom he is authorized to appoint.

The fifth section is neither objectionable nor necessary. It provides that only citizens of the United States over the age of twenty-one years shall be competent to serve as grand or petit jurors in Utah—that is the law now. The sixth section simply re-enacts the present territorial law with respect to grand juries. There is no objection to this, neither does there seem to be any necessity for it.

The seventh section takes the selection of juries away from the local authorities, and imposes that duty upon the district judge, United States attorney, and United States marshal. It seems rather unfair to the citizen who may be charged with a public office, that the judge who is to preside at his trial, the attorney who is to prosecute him, and the officer who has him in custody, shall have the power to pick out the men who are to pass upon his fate.

It seems a little unfair to the bar of Salt Lake to give to one of their number—the United States district attorney—the power to pick out one-third of the jurymen who are to determine the rights of litigants. It is certainly an immense grant of power to give—as this bill proposes—a district judge, attorney, and marshal, the power to roam over an entire Territory to find an eligible jury, for it will be noticed that under the provisions of this section district and county lines are abolished in the selection of jurors. The jurors for the third district court, which meets at Beaver, two hundred miles south of the railroad, may all be selected from Logan, eighty miles north of the railroad, or the entire three hundred jurors for the three judicial districts might all be selected from Corinne, or Alta, or any place in the Territory able to furnish the required number of idle and adventurous persons who would be content to embark in an anti-Mormon crusade. Neither a residence qualification, nor a property qualification, nor a tax-paying qualification, nor a local-citizenship qualification is proposed to be required of jurors. "Any citizen of the United States over twenty-one years of age," who chances to pass through Utah in a Pullman car, is an eligible juror anywhere from Salt Lake to Beaver. It is submitted that section seven, of House Bill No. 3,791, presents the most simple and yet the most sweeping and efficacious plan for packing juries ever devised by man.

It is also proposed in this section to set aside the ordinary rule of law that talesmen shall not be summoned from the bystanders, and it further proposed to allow "each party" in a criminal case six peremptory challenges.

It is submitted that, outside of Utah, there is not a State or Territory in this Union where a defendant, charged with a capital felony, is restricted to six peremptory challenges, or where, in the trial of any criminal charge whatever, the prosecution is allowed the same number of challenges as the defendant.

The ninth section of the bill of Mr. Merritt contains, perhaps, the most extraordinary proposition of legislation ever seriously presented. It provides that the fees of the United States marshal and his deputies, (the sheriffs of twenty-one counties,) the "emoluments" of the United States district attorney and his assistants, (the prosecuting officers of twenty-one counties,) the compensation of the three hundred jurors and the army of talesmen, shall all be paid out of the Territorial treasury, and I quote the section

"If the Territorial legislature shall fail to provide by law for the payment of said fees and compensation, then the same shall be paid out of the money appropriated by Congress for the compensation of members of the Territorial legislature!!!"

It is submitted that the expenses of courts, sheriffs, and juries ought to be paid, and usually are paid, by the community in which the court is held; that the property-owner of Washington county, in Southern Utah, ought not to be compelled to contribute toward the expense of the administration of justice in Salt Lake county.

I cannot believe that the other proposition, the proposition to coerce, or rather bribe, the members of a territorial legislature—even to do their duty—will ever pass Congress.

What of self-government would be left to the people of Utah if such a law should be enacted? The veto power of the Governor is absolute; the judical power will be absolute in the hands of the district judges if this bill pass. And now it is proposed to enter the legislative hall, and say to the representatives of the people in the territorial legislature, "Either vote out of the public treasury money enough to pay the cost of the monstrous system inflicted upon you, or we will take it out of your pockets."

It appears that, notwithstanding its elaborateness, the section under consideration is still defective. It should provide that the list of ayes and noes in the territorial legislature on the question of voting an appropriation for the "fees, emoluments, and compensation" of marshals, attorneys, and jurors should be carefully kept by the district judge, and that only those who voted "no" should have their mileage and per diem confiscated. It would be unjust to those patriotic ayes who might vote for the appropriation to submit them to the same financial depletion as the contumacious noes.

The tenth section proposes to set aside a well-known rule of evidence. It proposes in a criminal prosecution for bigamy, polygamy, or adultery, to allow the marriage to be proven by such evidence as is admissible to prove a marriage in civil cases. If it is hoped by the operations of this section to bring about convictions of persons charged with polygamy, I submit that it is likely to be ineffective. The plural wife of a Mormon is not a "wife" in the legal sense, whatever she may be in fact, or in their theology. No ceremony of marriage is performed in such cases by any civil magistrate or clergyman authorized by law to solemnize marriages, and the relation of the parties is, therefore, in law, only that of concubinage, proof of which when made might bring about a conviction for adultery, but clearly not for bigamy or polygamy.

The twelfth section gives the United States marshal or any of his deputies a power over the troops of the United States not bestowed upon any other civil officer of the Government. It provides that a deputy marshal may, if *in his judgment* asistance is necessary, apply to any officer having charge of United States troops for a *posse*, and thereupon the troops will be detailed in sufficient numbers. Pass this law, and any deputy marshal in Utah will have it in his unaided and unchecked discretion to march the United States troops against any community which may have incurred his displeasure.

The sixteenth section takes away from the people of Utah the right to elect their sheriffs, justices of the peace, and even judges of election, and vests the appointment of these officers in the Governor.

The seventeenth section is somewhat remarkable in its tender care of impecunious litigants, for it provides that "in all cases of appeal from one court to another, where a bona fide *or other* security is required to be given by the party appealing, it shall not be lawful, &c., to demand payment of costs," &c.

The twenty-fifth section disapproves the Utah statute of limitations, passed last winter. Why should the limitation law be repealed? It is the same in its provisions as the limitation laws of other States and Territories, and I can conceive of no good reason for annulling it.

Mr. Chairman, there appears no urgent necessity for any legislation with respect to Utah. The Territory is prosperous, the people are contented and peacefnl, taxation is light, new industries are being developed, railroads are in process of construction, mines are being opened, property is safe, the rights and liberties of every citizen are secure. Why not, then, let Utah alone? Why plunge every business interest of this prosperous community into the seething crucible of experimental legislation? The social condition of Utah is rapidly being assimilated to that of all other American communities. Her peculiarities are destined to speedily disappear. Their disappearance may be delayed, but cannot, in my judgment, be expedited by legislation. This bill contains a few sections that are well enough, and to which no great objections can be made, but there are other sections whose passage would inevitably produce turbulence, confusion, and business convulsion in Utah. The bill, indeed, goes far beyond the request of the memorial, and the memorial was evidently inspired by a few men who are possessed by a purpose of revolution, and who have much to gain and little to lose by any conditions of disaster which may result. The capitalists and business men of Utah do not want this legislation. The men who are constructing railroads, and building furnaces, and opening mines do not want it. In their behalf I beseech you to leave the laws of Utah undisturbed.

Won't Let Utah Govern Herself.

There seems to be a division of opinion among the Utah lawyers as to the justice of the legislative acts relating to territorial courts. One protest from certain members of the bar is made up of grave indictments against the legislature, chiefly relating to the establishment of small local courts of considerably wide original jurisdiction. Now we have a protest against that protest—also from lawyers in Utah. The truth of the case is that the local laws of Utah are pretty much the same as those of other Territories; but it does not seem to be safe to let Utah govern itself as Wyoming or Montana may be governed.—*N. Y. Tribune*,