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SPEECH

OF

HON. W. H. HOOPER,

OF UTAH,

In the House of Representatives, January 29th, 1873.

The House having resumed consideration of the bill for the admission of Colorado into the Union—

Mr. HOOPER, of Utah, said:

Mr. SPEAKER: In the remarks which I had the honor to submit to the House yesterday, I said that those who denounced the Mormons are compelled to go back from six to sixteen years, and grope in the twilight of fable for causes of complaint. I could ask no better illustration of this than the last speech of the gentleman from Montana.

When I point to the Utah of to-day, with her light taxation, her growing industries, her small farms, her clean-handed officials, her free roads, her progressive people, and her mighty growth, the gentleman from Montana replies by a reference to laws which have been repealed, to franchises which have expired, to grants which have been rescinded, to slanders which have been rebutted, and to conditions which have passed away. The past sometimes instructs us by its example, and it is well to glance behind us occasionally to ascertain our exact course and rate of progress; but he will prove a poor statesman, a poor legislator, and a poorer politician, who is perpetually gazing out of the rear of the car, and who never sees either a beauty or a defect until it has gone forever.

Since, however, the gentleman from Montana seems determined that no view of Utah shall be taken except a retrospective one; since the element he represents insists that legislation with respect to Utah shall be based not upon her present conditions and needs, but upon her past history, I am compelled to refer to that past. There is but little in it of which I am ashamed or afraid. There is much to which I can refer with pride.

I deny that the local legislation of Utah has ever been oppressive, monopolizing, or peculiar. I deny that emigration has been prevented, that enterprise has been discouraged, that any rights of any citizen or sojourner have been invaded, or that there is to-day any social or political conditions existing there which call for Federal interference; and I propose to make my statements good — not with figures of rhetoric, but by a reference to authorities and facts.

It has been asserted in substance by the gentleman from Montana that the Utah Legislature had passed laws in violation of the organic act, and in hostility to the United States, and notably the Utah law conferring or attempting to confer chancery and common-law jurisdiction upon probate courts has been held up and denounced as wicked and rebellious. Let us examine the laws of other Territories, and see if, as the gentleman from Montana asserts, "Utah is the only Territory" which has endeavored to amplify the jurisdiction of the probate courts.

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 court, 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 the 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, pages 82 and 88, 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 coextensive with the jurisdiction of the district court," &c.

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 process 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 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 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 to 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 co-extensive jurisdiction to the probate courts 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 conceded 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 very highest function of all chancery jurisdiction—the power to issue a writ of injunction. And yet the gentleman from Montana stands up in the face of this House, and forgetting the laws of Nevada, which he helped to frame, and ignoring the laws of his own Territory, with which he is supposed to be familiar, denies that in Nevada and Montana the power has been given to the probate courts to exercise chancery jurisdiction, and deliberately asserts that "chancery jurisdiction has never been given to the probate courts by any Territory whatever except Utah."

I can find no words of censure for the territorial Legislatures which thus endeavored to provide the people with local courts of competent 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.

The gentleman from Montana says that "the book of Utah statutes is literally filled with charters for toll roads." The statement is not creditable to his accuracy. If he had taken the trouble to look over the Utah statutes and compare them carefully with those of other Territories, he would have ascertained that I was right yesterday in my statement that there had been less of this character of legislation in Utah than in any of the other Territories.

Why, Mr. Speaker, in the entire Utah statutes, covering a period of twenty years, and nineteen years of her Legislative Assembly, including also the enactments of the provisional State of Deseret—The Government which was organized by the people previous to the Territorial government being granted unto them—there cannot be found, by my careful examination, eighty franchises, covering all grants for herd grounds, toll roads, bridges, canals, kanyons, and ferries, not averaging four to a session. The greatest number of these passed at any one session did not reach forty. How is it with the other Territories?

On examination of the acts of the Nevada Territorial Legislature for the year 1862 alone, I find that of one hundred and thirty-seven laws fifty-three were franchises, covering almost every conceivable case where legislative power may be exercised for private benefit.

There were twenty-six toll-road franchises, five railroad franchises, four bridge franchises, two gas franchises, two water franchises, one canal franchise, one ferry franchise, and two franchises granting exclusive rights to float wood and timber down the principal rivers in the Territory. One franchise gives to its recipients the exclusive right to run a ferryboat across the Humbolt river within certain limits, and the second law of the session was a franchise giving the exclusive right for ten years to maintain a bridge across the Carson river, at the foot of Main street, in the town of Dayton, forbidding the construction of any other bridge within three quarters of a mile on either side, thus practically cutting off all approach to the city except over the proposed bridge, permitting the moderate charge of fifty cents for toll for a wagon and two animals, and inflicting a fine of $100 to be paid to the grantee of the franchise on any person who should attempt to build another bridge.

The town of Dayton was then, as I understand, a flourishing burg of several thousand people, the Carson river is a stream perhaps fifty feet wide, and the cost of the bridge might in those flush times have reached a thousand dollars! Am I mistaken in giving the gentleman from Montana the credit of being a member of the Legislature which made these grants?

The Montana territorial Legislature during one session, that of 1864-65, granted fifty-one private franchises, of which forty-seven were toll road, bridge, and ferry franchises, covering eighty-five pages of the session laws, and permitting a charge of four dollars toll for crossing a bridge with a wagon and two animals.

The legislative grants of land and timber rights in Utah of which the gentleman speaks were neither so extensive nor so exclusive as is asserted. 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 was never an hour in that past when any person on earth was injured by them.

The gentleman from Montana says that these grants existed sufficiently long to enable the Mormons to prevent outsiders from settling in Utah. Of all the army of treasure-seekers who wended their way across the plains from 1849 until the completion of the railroad in 1869, I challenge the gentleman, I challenge the world, to present one single authenticated case of a would-be settler being prevented from settling 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 and 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; nothing but the system of co-operative industry, made possible by a unity of social and religious interests, could have caused the construction of irrigating canals and the harmonious and equal distribution of water from these canals.

The gentleman says that—

"There is a bitter irony in the claim that the Mormons have made the desert to blossom as the rose when we reflect that for twenty years, by means of every judicial and legislative usurpation they could devise, they have absolutely prohibited anybody else from engaging in the same work."

Sir, is this true? Go westward to Nevada and northward to Idaho. For hundreds of miles you shall find a country whose physical conditions, climate, and soil are entirely similar to those of Utah. You will find mountain ranges with valleys between, and streams of water running out of the kanyons. The land is as fertile as that of Utah, the water as abundant. the sunshine as sweet. There, as in Utah, it needs but the patient industry of man to drape the scorched wastes with bending orchards and change the arid deserts into smiling lawns. Yet you shall travel for days along these valleys and only the bark of the coyote and the soft voice of the lark will disturb the silence which broods from the Columbia to the Colorado. Why have not the non-Mormon farmers, who, it is said, have been excluded from Utah, settled in this unclaimed neighboring territory? Sir, there are no such excluded men; they are the creatures of the gentleman's imagination.

The gentleman has alluded to a grant of land made to myself and associates in Skull valley. I am glad he has done so, as an explanation of the circumstances connected with that grant will explain those that surrounded others. About a year before the grant referred to was made by the Assembly my partners and myself established a herd ground and opened a farm at Skull valley. We make improvements to the extent of a couple of thousand dollars. At the next meeting of the Legislative Assembly, without any action on my part, and indeed without my knowledge, a grant of a herd ground in Skull valley was made to sundry persons, myself included. Some time last year the United States surveyed that land. It was then open for pre-emption. All that my associates and myself expect to get of that land are two quarter sections, for which the Government will receive its $1.25 an acre. Does this look like "plastering grants" over the soil of Utah?

But the gentleman says he finds a grant of a toll road was made to me. I believe there was such a grant, but until mentioned by him the whole matter had passed from my mind. As this was a sample of many other grants for toll roads, I take pleasure in explaining it. At the time of the passage of this grant Mr. Ben Holladay was the proprietor of the line of stages running from the Missouri river to Salt Lake. He thought he had found a better route for his line than the one usually traveled, and petitioned the Legislative Assembly to grant him, his partner, Mr. Halsey and myself the right to collect toll over that part of the road which he proposed to build in Utah Territory, it being understood that a similar franchise had been granted by Colorado for that portion running from Denver to the Western line of that Territory. That road was never built, tolls were never collected, and the grantees never derived a cent benefit from it.

The gentleman complains that every little hamlet and town in Utah has been incorporated, and great powers given to the aldermen. How has this injured him? How has it injured the people? How has it inflicted wrong on any person on earth? He will find no increase of taxation, no restrictions on private action, and no invasion of public or private rights in consequence. It was thought wise to allow each settlement, separated as it often was by many miles of desert from its nearest neighbor, to regulate its own local affairs in its own way and provide for its own needs rather than to build up expensive county governments stretching over vast areas at great cost. And the municipal governments of Utah, founded as they are on the model furnished by the town governments of some of the New England States, are the most economical and Democratic governments in the world.

The gentleman says that in practice these municipalities "regulate everything above the earth, and on the earth, and under the earth." It seems, however, that the Legislative Assembly of Utah was willing that these privileges, with which the gentleman finds fault, should be shared by Mormon and non-Mormon alike, for I find that the town of Corinne, founded under non-Mormon auspices, and occupied by that class of citizens, had as extensive powers conferred by its charter upon its board of aldermen as those enjoyed by any other city, however favored, in the Territory.

With respect to the grant of an exclusive right to Brigham Young to manufacture whiskey, I can only say that it was an effort to confine the making of whiskey to a man who never drinks liquor, who hates intemperance and its evils, and who, if he could have controlled it, would never have made a drop or permitted a drop to enter Utah only so far as needed for medicinal purposes.

The gentleman says that—

"A man cannot go to Salt Lake City and start a butcher shop, because he runs in conflict with the corporation butcher shop, which is carrying on the sale of meat."

This is of a piece with the recklessness of statement which marks the speech of the gentleman from Montana. There is not now and never has been a corporation butcher shop in Salt Lake City, nor has the corporation ever engaged in the sale of meats. In the relation of the story of P. H. Lannan, therefore, there is a remarkable economization of truth.

The Salt Lake City authorities erected a market-house, as other cities have done before, and prohibited the sale of fresh meat except at this market-house, as many cities in the western and eastern States have done before. Mr. Lannan could have sold meat in this market-house on exactly the same conditions as the dozen or twenty butchers who complied with the ordinance. But he applied for permission to keep a butcher shop, not at the market-house, but on the main street of the city, two blocks and a half distant. The common council of Salt Lake City declined to violate its sanitary ordinance to oblige him, and then Mr. Lannan started a butcher shop anyhow. It is not true that suit after suit and prosecution after prosecution was instituted against him. But three suits were instituted, and pending the decision of the district court upon the power of the common council to confine the sale of meat to a particular locality, and for a period of two months or thereabout, Mr. Lannan was allowed to run his butcher shop without further molestation.

It is true, as the gentleman from Montana asserts, "that the Salt Lake City council attempted to prohibit the sale of liquor in Salt Lake City except by the corporation." Following in the course marked out by Maine and New Hampshire and Massachusetts, the authorities of Salt Lake sought to restrict and regulate the use of intoxicating liquors. Failing to obtain the sanction of Judge Titus to their ordinance confining the sale of liquor to the corporation shop, they attempted, as the gentleman from Montana asserts, "to get around that decision" by levying a tax so great that it should be impossible for saloon-keepers to pay it. They fixed the dram-shop license at $3,600 per annum. They hoped this tax would be a prohibitory one. They hoped by this means to prevent the establishment of drinking saloons. They hoped to turn the current of vice away from Salt Lake City. They failed; first, because two or three men were able to pay the enormous license fees and still keep their dram-shops open, and then dozens of men, encouraged by the Federal officers and judges, opened drinking saloons, refused to pay license, and defied, and still continue to defy, all efforts of the city authorities to the contrary.

If a summons is served by a Salt Lake City policeman on a dram-