

THE EVENING NEWS.

Thursday, Feb. 10, 1914.

JURISDICTION OF PROBATE COURTS, ETC.

Opinion of Hon. J. Snow, Territorial Attorney-General.

[CONTINUED.]

"It must be confessed that the practice exhibits somewhat of an anomaly. Strictly speaking, there is no sovereignty in a territory of the United States but that of the United States itself. Crimes committed therein are committed against the government and dignity of the United States. It would seem that indictments and writs should regularly be in the name of the United States, and that the attorney of the United States was the proper officer to prosecute all offenses. But this practice is not followed, not only in Utah, but in other territories organized upon the same type. The question is whether this practice is legal, or in other words, whether the act of the territorial legislature was authorized by the organic act. If it was, the plaintiff in error in this case was erroneously ousted from performing the duties of his office of attorney general of the Territory.

"The power given to the legislature is extremely broad. It extends to all rightful subjects of legislation consistent with the Constitution and the organic act itself. And there seems to be nothing in either of these instruments which directly conflicts with the territorial law. If there is any inconsistency at all, it is in that part of the organic act which provides for the appointment by the President of an attorney for the territory. But this is not necessary in the case of Utah. The proper business of that attorney may be regarded as relating to cases in which the government of the United States is concerned. The analogous case of the marshal, and the separation of the business of the courts as to government and territorial cases, seem to give some countenance to this idea. At all events, it has sufficient basis for its support to establish the conclusion that there is no necessary conflict between the organic and the territorial laws. The organic act is susceptible of a construction that will avoid such conflict. And that construction is supported by long usage in this and other territories. Under these circumstances it is the duty of the court to adopt it, and to declare the territorial act valid. In any event, no great inconvenience can arise, because the entire matter is subject to the control and regulation of Congress.

"The judgment of the Supreme Court of Utah must be reversed."

"W. MIDDLETON, C. S. C. U. S."

"The act of the Governor and Legislative Assembly of this Territory, approved March 3, 1852, has the following—

"In Act in relation to Marshals and Attorneys.

"SEC. 1. Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That a Marshal shall be elected by a joint vote of both Houses of the Legislative Assembly, whose term of office shall be one year, unless sooner removed by the Legislative Assembly, or until his successor is elected and qualified. Said Marshal shall, before entering upon the duties of his office, take an oath of office, and file bonds in the penal sum of not exceeding twenty thousand dollars, conditioned for the faithful discharge of his duties, which bond with securities, is to be approved by the Secretary of the Territory, and filed in his office.

"SEC. 2. Said Marshal shall have power to appoint one or more Deputy Marshals in each judicial district of the Territory, as the necessity of the case may require, whose term of office shall expire with that of the Marshal; but they may at any time be removed at his discretion.

"SEC. 3. It shall be the duty of the Marshal, or any of his deputies, to execute all orders or processes of the Supreme or District Court, in all cases arising under the laws of the Territory, and such other duties as the Executive may direct, or may be required by law pertaining to the duties of his office."

From the date of this Act till the present time, this officer has been elected as provided in this statute, and, until the case of the United States vs. McCallister arose in 1870, he has been recognized as being the legal ministerial officer of the court, in the cases named in the act, by every governor, every legislature, and every judge on the bench, without exception.

True, some have claimed that, under the 7th section of the Organic Act, which reads as follows: "SEC. 7. And it be further enacted: That all township, district, and county 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 end of the first session of the Legislative Assembly, and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers."

(TO BE CONTINUED.)

NOTICE.

A MEETING of the Tax-payers of the 17th School District will be held on Thursday, Feb. 12, at 8 o'clock, at the School-house, at which a financial report will be presented, also to take into consideration the raising of a tax to defray the above plan in progress of execution.

NATHAN DAVIS, Trustee.

17th School District, Salt Lake City, Feb. 11, 1914.

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Salt Lake City. 6:10 A.M. 3:40 P.M.

Provo. 6:20 A.M. 3:50 P.M.

Centerville. 6:30 A.M. 4:00 P.M.

Farmington. 6:40 A.M. 4:10 P.M.

Kaysville. 6:50 A.M. 4:20 P.M.

Arrive at Ogden. 7:00 A.M. 4:30 P.M.

No. 2. Passenger. No. 3. Passenger. Fare. Tickets.

Ogden. 8:40 A.M. 6:20 P.M.

Kaysville. 9:20 A.M. 7:10 P.M.

Farmington. 9:30 A.M. 7:20 P.M.

Centerville. 9:40 A.M. 7:30 P.M.

Provo. 9:50 A.M. 7:40 P.M.

Arrive at Salt Lake City. 10:40 A.M. 8:30 P.M.

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Leaving Salt Lake City at 8:30 a.m. and 5:00 p.m., and Ogden at 8 a.m. and 3:30 p.m.

For all information concerning freight or passenger apply to

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Daily Trains

Name of Station. No. 1. Passenger. No. 2. Passenger. Fare. Tickets.

Salt Lake City. 6:10 A.M. 3:40 P.M.

Provo. 6:20 A.M. 3:50 P.M.

Centerville. 6:30 A.M. 4:00 P.M.

Farmington. 6:40 A.M. 4:10 P.M.

Kaysville. 6:50 A.M. 4:20 P.M.

Arrive at Ogden. 7:00 A.M. 4:30 P.M.

No. 2. Passenger. No. 3. Passenger. Fare. Tickets.

Ogden. 8:40 A.M. 6:20 P.M.

Kaysville. 9:20 A.M. 7:10 P.M.

Farmington. 9:30 A.M. 7:20 P.M.

Centerville. 9:40 A.M. 7:30 P.M.

Provo. 9:50 A.M. 7:40 P.M.

Arrive at Salt Lake City. 10:40 A.M. 8:30 P.M.

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