GOVERNOR MURRAY'S REPORT.

TO THE SECRETARY OF THE INTERIOR.

TERRITORY OF UTAH,
Executive Office,
Salt Lake City,
September 16, 1883.

To the Secretary of the Interior:

Sir: In compliance with your request I have the honor to submit the following report.

The questions of government arising under the unusual condition of society here are those which are at once different from other communities and other governments either State or Territorial, in the United States. These questions are of absorbing interest to the people of the Territory of Utah, and of primary nterest to the Government. If it be a fact that conditions here are different from other Territories, then it follows as a sequence that exceptional legislation must be enacted.

While other matters might be presented to you in a formal report, I feel it my duty, which it would be more pleasant to avoid, to confine myself to the question of absorbing interest and primary importance.

That there are wrongs in Utah I regret. That the Government and those charged with enforcing the laws cannot and ought not to compromise with wrong, I am sure will not be questioned.

Among other duties imposed upon the Governor by an act of Congress organizing the Territory is one that "He shall take care that the laws be faithfully executed."

Under the oath of office charging me with this duty, I have endeavored to execute the laws of Congress and of the Territory with fidelity and mercy, and with whatever ability I possess.

A combination to nullify laws of Congress has long continued in Utah. This conspiracy led to open revellion at one time, and continues to evade and defeat the plain will of Congress and the President, and the adjudication of the Supreme Court.

The theory, adroitly advocated by many interested by business relations, and emanating from those engaged in this long-continued combination to defeat the execution of the laws of the United States, to the effect that time and railroads would prove the remedy is wrong.

While I am satisfied that many intelligent and thinking people at a distance have accepted this theory, I am sure its acceptance by Congress and the country means mischief in the future. Therefore I am impelled to warn you, Mr. Secretary, and through you the country, of dangers that beset the government in this another "irrepressible conflict," and to make in this report an earnest plea for the adjustment of all wrongs and the establishment of good government in Utah by Congress, which undoubtedly possess the power, and which I may be pardoned in saying, I believe to be its duty to do quickly.

The power to promptly enforce the laws and to preserve the peace in so doing cannot rightly be denied to those charged with their execution.

The history of all States and Territories demonstrates that times come when military aid is necessary to support the civil authority. I know of no reason that takes Utah out of the rule. Under the law and the proper proclamations of my predecessors the militia of Utah, purposely organized to be independent of Federal authority, is not and cannot be made available.

It therefore only remains for this Territory that the military force of the United States should be made available, and I present with the necessity the recommendation that it may be made lawful for soldiers of the United States to be used for the execution of process out of the courts of the United States in the hands of the United States Marshal of Utah, and that their services, under proper restrictions, in case of riot, of insurrection, domestic violence and for the preservation of the peace may more readily be made effective than under the present provision of law.

I trust, however, such security to person and property as is right and which every citizen may reasonably expect will be granted to all alike here.

By an act of Congress, in 1850 the Territory of Utah was formed.

I find that since 1852 there has at no time been a lawful Territorial government.

Section 7 of this organic act provides:

That all township, district, and county officers not herein otherwise provided for shall be appointed or elected, as the case may be, in such a manner as shall be provided by the Governor and Legislative Assembly of the Territory of Utah. The Governor shall nominate and, with the advice of the Legislative Council, appoint all officers not herein otherwise provided for, etc.

Under this act of Congress the counties of Utah were properly organized. But the Legislature joined with Brigham Young, the governor of the Territory, by pretext of different Territorial statutes, and in order to place the Territory out of a future executive control and beyond Federal influence, made provision for their appointment or election in ways not authorized by but directly in opposition to the expressed will of Congress. While other Territories with like provisions have carried on their governments in accordance with law, Utah has persisted in maintaining its unlawful government, in spite of the act of Congress, the adjudication of the Supreme Court of the Territory of Utah, and the later opinion of the honorable the Commissioners under the law known as the Edmunds act.

Discharging the duty imposed upon me by Congress, and which had theretofore been upheld by the Supreme Court of the Territory, I nominated to the Council persons for the different Territorial officers. Among other things, I said in nominating them that—

"Such officers must necessarily be named in the matter designated by Congress. Their election or appointment in any other way under an act of the legislative power of the Territory, which derives its power from the provisions of the self same law, is nullification."

This power was exercised by Brigham Young, the first governor of the Territory. For many years with few exceptions, this part of the provisions of this organic act has been avoided and disregarded, and such officers have been elected and appointed in other different ways than that prescribed by act of Congress.

The council declined to confirm or reject them, asserting that the power given by Congress had passed out of the hands of the Governor by different Territorial statutes cited by them, and resolved—

That the complaint of his excellency the Governor is groundless and his nominations unnecessary, and that no action thereon is required.

And the unlawful Territoral government, which for over thirty years has existed in the face of Congress and the country, exists to-day.

The failure to hold the August election in 1882 under the Edmunds law, as only under its provisions it could be held, was provided for by an act of Congress known as the Hoar amendment. In obedience to its provisions I appointed a number of persons to fill the vacancies occasioned by the failure to elect. Many of those so appointed qualified over vexatious obstacles thrown in their way from one end of the Territory to the other, and made legal demand for the offices to which they had been appointed.

The unanimity and universality of the refusal that followed throughout the entire Territory could only on this earth perhaps be seen in Utah.

Many laws of Congress have been nullified in Utah, and this law was defeated with the usual "oneness," and I must say with an apparent familiarity with the business in hand. The lawfully appointed officers instead of appealing to force appealed to the courts. The Supreme Court of the Territory sustained the act of Congress and the action of the Governor, but the technicalities and delays of the law consequent upon appeals and the stay of proceedings resulted as usual in the Territory in a failure, and polygamists and worse held on and exercised the functions of office, and to-day many so hold who are not entitled under the law to cast a vote.

The officers who universally join in this combination to defeat the law of Congress held and hold their authority from the Congress they defied and whose law they made a nullity.

It is not reasonable to suppose that the laws can be faithfully executed when the Governor under the law can only rely upon those who combine to defeat it. Therefore, Congress must provide other and different agencies to enable a Governor to "take care that the laws are faithfully executed."

CHURCH AND STATE.

The absolute separation of church and State was by the founders of our Government and the writers of our Constitution, made a principal factor in its foundation. Several of the original States went so far as to forbid an ecclesiastic from holding any public office. The history, so well understood from the debates and traditions and the surroundings of our national birth, made unquestionable their purpose then, as it is my desire now, to protect the government as against the encroachments of the church.

The first article of amendment to the Constitution declares "that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," etc.

The church then, as the church now, and here in Utah, needs no protection against the Government of the United States, for the reason that the Government was then and now is the fortress of civil and religious liberty. That man or that set of men, be they what they may, who assert and teach a doctrine so infamous deserve the condemnation of all men, and must and will receive the condemnation of a Government that protects all men in the right "to worship God according to the dictates of conscience."

This guarantee, sacred to all, is right. It should be maintained always, everywhere, and by all, but never be abused.

It is true, however, that law-breakers and law-defiers and nullifiers of the law in Utah, who enjoy it in common with all citizens of this country and every denomination and faith, have abused it and do abuse it. Continually and deftly it is used by those who abuse it, and the man engaged in other affairs is misled in considering what is wrongfully termed the "Utah problem." If the question of religion and religious beliefs enters at all into an intelligent discussion of the question in a governmental sense, which I doubt; it then and certainly must be under the first prohibition, "that Congress shall make no law respecting the establishment of religion," rather than under the second, "or prohibiting the free exercise thereof."

I beg, on this important point, in considering the question, to present some facts of history, such as I may properly do in the report I have the honor to make, a question with which we are now grappling, and which, when calmly considered under the light of the Constitution, can leave no justifiable grounds of difference of opinion in reason or in law.

The question, then, is not whether Congress has or may prohibit the free exercise of religion, for that has been decided under the law of 1862 by the Supreme Court in the test case of Reynolds, but whether the Territorial legislative assembly in Utah, an agency of the General Government, created by Congress and paid as such out of the Treasury of the United States, has not made law upon law respecting the establishment of religion. The Constitution does not say Congress shall not establish religion. The provision is more comprehensive. It forbids any law respecting the establishment of religion. What are the facts? A band of men, many of them good, but undoubtedly misguided, professing in common a religious belief, ejected from Ohio and going to Missouri, ejected from Missouri and going to Illinois (incorporating in their system of to-day features and practices more abhorrent than any known then,) ejected from Illinois, turned their backs on the United States, with the avowed purpose of going to the shore of the Pacific Ocean, then a foreign country. These people were possessed of a fanatical dream of establishing a polygamic empire that was to supplant this and all other governments. Helped in their helplessness and poverty and distress across the plains by the government, guided in their journey by reports furnished by the War Department at Washington, whose officers had traversed and surveyed the roads and mountains and valleys, they settled in this valley with its river and lake: The willows that marked the mountain stream gave evidence that the soil needed but a touch of cultivation to yield a ready response. A valley in which numbers of the early pioneers who had passed farther to the west had looked upon with admiration and left for the fortunate pioneers that were to follow. The purpose of going to the Pacific Coast having been abandoned, the young men who as a favor had been mustered into the service by the government and paid in advance, and known as the Mormon Battalion, having gone on to California by the southern route, returned from their battleless march but creditable service, and three days after the arrival of the pioneers, joined them where Salt Lake City is now situated. With their pay and horses and arms, material aid was given to this settlement, which under the flag of the United States, by both pioneers and battalion, was made on a territory which under our treaty with Mexico afterwards, became the property of the United States.

Steps were at once taken looking to the establishment of a State government. A vast territory was mapped out from the northern boundary of Mexico to the Columbia River in the north, and from the Sierra Nevada mountains in the west to the mountains whose waters flow into the Gulf of Mexico; and a constitution adopted to govern "until the Congress of the United States shall otherwise provide for the government of the Territory hereinafter described by admitting us into the Union." That we, the people, grateful to the Supreme Being, etc., do ordain and establish a free and independent government, by the name of the State of Deseret.

Among others the following act was passed:

An ordinance incorporating the Church of Jesus Christ of Latter-day Saints, Approved February 8, 1851.

SECTION 1.—*Be it ordained*, That all that portion of the inhabitants of said State which now are or hereafter may become residents therein, and which are known as the "Church of Jesus Christ of Latter-day Saints," are hereby incorporated, made, and declared a body corporate, with perpetual succession under the original name and style of the Church of Jesus Christ of Latter-day Saints, with full power to sue and be sued, defend and be defended, in all courts of law and equity in this State; to establish order and regulate worship, and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

SEC. 2. *And be it further ordained*, That, said body or church as a religious society may at a general or special conference elect one "trustee-in-trust," and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage use and control the real and personal property of said church, which said property shall be free from taxation; which trustees and assistant trustees when elected or appointed, shall give bonds with approved security in whatever sum the said conference *may deem sufficient for the faithful performance* of their several duties, which said bonds when approved shall be filed in the general church recorder's office at the seat of general church business. When said bonds are approved by said conference and said trustees and assistant trustees shall continue in office during the pleasure of said church, and there shall also be made by the clerk of the conference of said church a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general church recorder's office at the seat of general church business. And when said bonds are filed and said certificates recorded said trustee or assistant trustees may receive property, real or personal, by gift donation, bequest, or in any manner not incompatible with the principles of righteousness or rules of justice, inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well-being of said church.

SEC. 3. *And be it further enacted*, That as said Church holds the constitutional and original right in common with all civil and religious communities "to worship God according to the dictates of conscience," to receive communion agreeable to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ; for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all; it is also declared that said Church does and shall possess and enjoy continually the power and authority in and of itself to make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions for the good order, safety, government, convenience, comfort and control of said Church, and for the punishment or forgiveness of all offenses relative to the fellowship, according to church covenants; that the pursuit of bliss and the enjoyment of life, in every capacity of public association and domestic happiness, temporal expansion or spiritual increase may not be legally questioned: *Provided, however*, That each and every act or practice so established or adopted for law or custom shall relate to solemnities, sacraments, ceremonies, conscriptions, endowments, tithings, marriages, fellowship, or the religious duties of a man to his Maker; inasmuch as the doctrine, principles, practices, or performances support virtue and increase morality and are not inconsistent with or repugnant to the Constitution of the United States or of this State, and are founded in the revelations of the Lord.

SEC. 4. *And be it further ordained*, That said Church shall keep at every full organized branch or stake a registry of marriages, births and deaths, free for the inspection of all members and for their benefit.

SEC. 5. *And be it further ordained*, That the Presidency of said Church shall fill all vacancies of the assistant trustees necessary to be filled until superseded by the Conference of said Church.

SEC. 6. *And be it further ordained*, That no assistant trustees or trustee shall transact business in relation to buying, selling, or otherwise disposing of Church property, without the consent or approval of the trustee-in-trust of said Church.

Is this or was it a law "respecting an establishment of religion." It will be remembered that when Congress declined to admit Deseret into the Union, it provided a Territorial form of Government under the name of Utah. The Legislature of Utah, by an act approved October 4th, 1851, re-enacted this and all laws passed by the State of Deseret.

Besides usual powers granted to church corporations for legitimate business purposes, but only for the purpose of worship, here is granted "the unusual power to establish, order and regulate worship." It created the heretofore unknown general office of "trustees to hold property for purposes of worship only, in an unqualified sense it established them as trustees to hold, buy, sell, manage, dispose, etc., the real and personal property of the church, in other words, to possess, hold and sell farms, stores and railways, banks, telegraphs, theatres, cattle, sheep, etc., such as is now held by the church, all of "which said property shall be free from taxation," etc. Bonds of these trustees were to be executed and filed where? In the office of the County Recorder or Secretary of the Territory, as with other corporations? No, but in the Church Recorder's office. At the county seat? No, but at the "seat of general church business."

These trustees to continue in office at the "pleasure of said church," 2nd to receive real and personal property "in any manner" "not incompatible with the principles of righteousness," and to be free from taxation; and all this enacted by a Legislature created by Congress as an agency, and paid for their labor respecting an establishment of religion out of the Treasury of the United States.

The third session defines the right to worship God according to the dictates of conscience, which is right; but, further, it granted power to this organization for the punishment or forgiveness of all offenses relative to fellowship, and solemnly declared that the pursuit of bliss and enjoyment of life in every capacity of public association and domestic happiness "may not legally be questioned."

That is, that which is already established may not in so far as law is concerned be inquired into or questioned. Under prescribed conditions we find a legislative enactment and guarantee that these particular doctrines are founded in the revelations of the Lord. The word "inasmuch" is used where "in so far" would have been used had there been no purpose to establish a religion and confer power upon ecclesiastical courts to visit pains and penalties, even to that of death, in all matters "relative to fellowship according to church covenants."

Section four of this act required a registry of marriages, not for public inspection, but for the inspection of all members and for their benefit. The courts of Utah so far have failed to have these registries produced to them or to find any man who would testify more than that such registry records were kept somewhere and by somebody.

This act to-day stands in the compiled laws of Utah published by authority in 1876.

In 1862 Congress passed the following law:

CHAPTER CXXXI.—AN ACT to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled. That every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States has exclusive jurisdiction, shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars and by imprisonment for a term not exceeding five years; Provided, nevertheless, that this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five consecutive years without being known to such person within that time to be living, nor to any person by reason of former marriage which shall have been dissolved by the decree of a competent court, nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of nullity of the marriage contract.

SEC. 2. *And be it further enacted*, That the following ordinance of the provisional government of the State of Deseret, so called, namely "An ordinance incorporating the Church of Jesus Christ of Latter-day Saints," passed February 8, 1851, and adopted, re-enacted and made valid by the Governor and Legislative Assembly of the Territory of Utah by an act passed January 18, in the year 1855, entitled, "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution," and all other acts and parts of acts heretofore passed by the said Legislative Assembly of the Territory of Utah, which establish, support, maintain, shield or countenance polygamy, be, and the same is hereby disapproved and annulled. *Provided*, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned, nor with the right "to worship God according to the dictates of conscience," but only to annul all acts of law which estab-