VETO POWER IN UTAH.

MEMORIAL TO CONGRESS OF THE LEGISLATIVE ASSEMBLY OF UTAH.

United States House of Representatives, April 19, 1886.—Referred to the Committee on the Territories and ordered to be printed.

To the honorable President, the Senate, and House of Representatives of the United States in Congress assembled:

GENTLEMEN—We, your memorialists, the legislative assembly of the Territory of Utah, respectfully represent that, having been elected by the citizens of this Territory duly qualified as voters under the provisions of the act of Congress known as the Edmunds law, we have met and labored diligently during the term of sixty days required by law, and have passed such measures as were necessary to the welfare of our constituents and to comply with the requirement of section 9 of the Edmunds act. But in the discharge of our duties we have met with persistent obstruction from the governor, who, exercising arbitrary and extraordinary powers, has nullified the chief labors of the session and has thrown the affairs of the Territory into perplexing confusion. We therefore memorialize your honorable body and earnestly ask your attention to the following facts and grievances:

It has been well understood from the opening of the present legislature that a deep-laid conspiracy has been formed for the purpose of effecting a revolution in Utah, by which the entire control of the Territory should be wrested from the large majority of its citizens and placed in the hands of a small minority, who have for a long time, by misrepresentation and falsehoods, sought to prejudice the Government and people of the United States against Utah and its people.

Unable by reason of numerical insignificance to wield any influence of importance at the polls, this conspiring minority have planned to obtain the entire disfranchisement of the majority or the concentration of political power in a commission of their own number, so that in either event the few shall rule while the vast majority shall be placed in the position of subjugated slaves.

At the head and front of this conspiracy stands Eli H. Murray, governor of Utah, who has openly advocated the disruption of the Territory by depriving its citizens of every vestige of local self-government, and who has from the commencement of his administration, allied himself to the plotters against the peace of the people, and has persistently abused and insulted and maligned the majority in private, in public documents and through the medium of the press. By the most atrocious falsehoods, by attempted usurpations, by insolent messages, he has sought to provoke a conflict between the people and the Federal authority, which he claims to represent, and between the legislative and executive branches of the local government.

During the present session he has vetoed twenty bills sent to him for signature, and thirteen bills he has contemptuously ignored. The excuses he offered, where any have been given, have been in most instances of the flimsiest character, and in no case have contained vital objections or reasons that raised a pertinent issue. Every one of those measures would have been beneficial to the whole people of Utah, and while framed in response to the wishes of our constituents were in harmony with the Constitution and laws of the United States. Among the most important of those measures were bills for the following purposes: To allow bail as a right in cases of appeal from the lower courts to the higher except in capital offenses; to provide for an increased jury list and the payment of jurors; to regulate the legislative apportionment of the Territory; for the support of the Deseret University; creating a Territorial board for the equalization of taxes; for the support of the Territorial insane asylum; prescribing the qualifications of electors and office-holders; appropriating funds for Territorial expenses, etc.

The bill allowing bail was necessary to the ends of justice, for it is a farce to grant the right of appeal and then inflict the punishment appealed from while the appeal is pending. The bill increasing the jury list was required, because the Poland law provides for only two hundred jurors for each year, and these have been found insufficient, necessitating a resort to open *venire* system, which has been so shamefully abused that juries have been packed with persons chosen intentionally from the enemies of defendants. The bill followed strictly and exactly the provisions of the Poland law in the manner of selecting the jurors, but increased the number so as to meet every possible requirement without recourse to the open *venire*. It also provided for the payment of jurors and witnesses, and the veto not only continues the system by which juries may be packed, but deprives jurors, who are compelled to serve, of any pay for their services for the ensuing two years. The bill apportioning the legislative representation of the Territory was framed in accordance with the following recommendation of the Governor:

> I recommend that the districts be so constructed that each shall have a voice without being overborne by a larger neighbor which may be combined with it as now.

At the last session of the legislature he vetoed a bill drawn up at his suggestion, but stated that if the legislature would pass an act apportioning the Territory into twelve council districts, and twenty-four representative districts, on the basis of one councilor to every 12,000, and one representative to every 6,000 of population, he would be pleased to approve it. The bill was passed exactly in the form he proposed, but he neither signed nor approved it, nor mentioned it further, so it died a natural death. The bill we have passed is strictly in conformity with his expressed wishes, but he has refused to append his signature.

The bill for the support of the Deseret University is essential to the welfare of the only college sustained by Territorial funds. It appropriated for the gratuitous tuition of normal students the sum of $10,000 per annum, instead of $5,000, which has been the annual amount, but which is now insufficient to the growing educational needs of the Territory and the rapid growth of the institution. The bill creating a Territorial board of equalization was passed at his suggestion, and is a needed measure to secure equal taxation in the several counties. The bill for the support of the Territorial insane asylum is a public necessity, not only to maintain a praiseworthy establishment, but to pay liabilities contracted at the Governor's instance as one of its directors. No provision now exists by which the unfortunates cared for in the asylum may be maintained.

The bill prescribing the qualifications of electors and office-holders was framed in pursuance of the following clause of Section 9 of the Edmunds act, to-wit:

> And at or after the first meeting of said legislative assembly, whose members shall have been selected and returned according to the provisions of this act, said legislative assembly may make such laws, conformable to the organic act of said Territory and not inconsistent with other laws of the United States, as it shall deem proper concerning the filling of the offices in said Territory declared vacant by this act.

The legislature of 1884 passed an election law, as authorized by the foregoing; but it was vetoed by the Governor, who specified a number of very trifling reasons for rejecting it. We framed a bill upon the groundwork of the former measure, but avoiding the points objectionable to the Governor as presented in his former veto message. He has peremptorily refused to sign it. The only reason that we know of for this refusal is the desire to continue in office the five commissioners appointed under the Edmunds law to select proper persons to fill the registration and election offices in the Territory. The design of the Edmunds law, as indicated in section 9, was to have those offices filled as the Legislature should provide, and thus abolish the commission. It was only designed to be temporary. As soon as a legislature elected under the provisions of the Edmunds law should meet and provide for the filling of those offices the object of appointing the commission would be accomplished; and the specific purpose of their appointment and of the election of a legislative assembly under their auspices, was to prevent bigamists, polygamists and persons practicing unlawful cohabitation from voting or holding office in Utah. This was secured by the election bill that the governor has vetoed, which provides for the registration of voters, and imposes the following oath upon all applicants for registration:

TERRITORY OF UTAH, County of ——. } ss.

I, ——, being first duly sworn [or affirmed] depose and say that I am over 21 years of age, and have resided in the Territory of Utah for six months, and in the precinct of —— one month immediately preceding the date hereof, and I am a native born [or naturalized, as the case may be] citizen of the United States, and a taxpayer in this Territory; and I do further swear [or affirm] that I am not a bigamist or polygamist; and that I do not cohabit with more than one woman.

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Subscribed and sworn to before me this —— day of ——, 188 .

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Registration officer for —— Precinct.

Or, if a female, the following oath or affirmation.

TERRITORY OF UTAH, County of ——, } ss:

I, ——, being first duly sworn [or affirmed] depose and say that I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of —— one month immediately preceding the date hereof [and am a native born or naturalized, or the wife, widow, or daughter, as the case may be, of a native born or naturalized citizen of the United States]; I do further solemnly swear [or affirm] that I am not cohabiting with a bigamist, polygamist, or any person cohabiting with more than one woman.

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Subscribed and sworn to before me this —— day of ——, 188 .

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Registration officer for —— Precinct.

This is the same oath formulated by the commissioners and taken by all persons who voted at the election which returned us to office. The commissioners had no authority in law to impose any oath whatever. Their act in doing so was legislation. While they remain in office that oath is imposed without authority of law. But by the bill which the governor has vetoed, the oath would become legal and the object of the Edmunds law, in its political portion, would be fully accomplished. The veto of that bill nullifies one of the purposes of the Edmunds act, and continues in office a useless commission, costing the Government an average of $50,000 per annum, not including the $25,000 per annum for their salaries or the large amount for their personal expenses. This Territory, under the bill we passed, could attend to its own election business at a cost of not more than $5,000, which would be paid out of its own treasury. The veto of that bill, then, costs the United States Treasury about $75,000 per annum unnecessarily, and without any good result.

The appropriation bill was closely economical, and provided the necessary funds for the local government, for educational purposes, for the improvement of roads and bridges, for the fees of jurors and witnesses, and other expenses of the courts, and to meet obligations lawfully contracted. But it created no public debt, fostered no private scheme, and kept within the limits of the current revenue. The reason assigned for vetoing this bill, which was absolutely necessary for the conduct of public affairs, is that the officers to handle the funds are not *de jure* officers, because they are not appointees of the governor. For Twenty-six years the Territorial auditor and treasurer were elected by the legislative assembly in joint session. The law was then changed, making them elective by the people. The bill rendering the officers elective was signed by Governor Murray's predecessor, and was not disapproved by Congress.

The present incumbents were duly elected and qualified, and hold their commissions from Governor Murray himself. But the governor contends that he has the right to nominate these officers, to be confirmed by the council of the legislative assembly. And because this right is disputed by the council who have not confirmed his nominees, persons obnoxious to the great majority of the citizens, he has refused to sign the appropriation bill, and has thus cut off the motive power which turns the wheels of the Territorial machinery, stopping all public improvements and demoralizing business generally. In the face of the law standing upon our statute books, the council could not accept the dictum of the executive who is not endowed with judicial powers. In declaring the law invalid which provides for the election of the auditor and treasurer, he has assumed judicial functions, and in vetoing the appropriation bill, on the pretext that those officers were elected under an invalid law, he has acted the part of a tyrant and an obstructionist, placing a barrier in the way of all Territorial advancement. Even if the governor's view of the law is correct and our predecessors for thirty-four years have been mistaken, and this can only be properly decided by a competent court, that does not justify an executive in destroying the combined labors of both houses of the legislature. As well might the President of the United States refuse to sign all the appropriation bills of Congress because the Senate refused to confirm his nominees to office.

The power of absolute veto which is vested in the governor of Utah is the primal evil that suggests and makes possible the obstruction of the executive. It stands as an anomaly and a solecism in this great Republic. It is a menace to freedom and a relic of monarchial absolutism. In every State and Territory of the Federal Union, except Utah, a two-thirds majority vote of the legislature will pass any duly enacted bill over the governor's veto. Even Arizona, once under the same disability as Utah, was, July 19, 1876, freed from this unjust and needless despotism.

If the one man who wields this extraordinary power were of the people, or a friend to the people whose expressed will at the polls he can annul by a stroke of the pen or by dogged refusal to sign his name, it would not be so thoroughly oppressive. But he is usually not identified with the people nor with their interests, but is arbitrarily appointed by those in whose authority the people affected have no voice or vote, from a distant place, and with aims and purposes foreign to theirs. Thus one man who is unfriendly, in this case strongly antagonistic, to the masses, can render null and void by simply acting as an obstructionist, the entire labors, for sixty days, of thirty-six legislators elected at the polls by nearly all the voting citizens of the most populous territory of the Union.

Measures are pending in your honorable body to deprive of the elective franchise the industrious, peace-loving, thrifty and self-supporting citizens of Utah who are free from the disabilities of the Edmunds act, and cannot be convicted of crime, essential or constituted by law. In some matters of belief they differ from other citizens. Is this an offense which should render them voteless in a land of religious liberty? The Supreme Court of the United States has enunciated the doctrine that governments can only legislate against actions. That matters of faith and opinion and worship are beyond their control, and that it is time for them to interfere when beliefs break out into overt acts against peace and good order. Your honorable body is urged to pass laws in violation of this principle and of the first amendment to the Constitution of the United States. The only results that can be expected from such a revolution in the affairs of this Territory are the complete control of the many by the conspiring few. Eighty-five per cent. of the population dominated by the other 15 per cent., seven-tenths of the voting citizens deprived of the ballot to please and enrich the remaining three-tenths, the latter now holding all the offices in the Federal gift, and plotting and conspiring to grasp all the local offices and the local finances. It is an error to suppose that this will tend to solve the religious problem peculiar to this Territory. It will but confirm the faith of those who adhere to tenets which they will deem assailed by unfair and unprecedented weapons, and render more solid and compact the ranks of the people so unjustly despoiled.

Disfranchisement for unorthodox belief, or for membership in an unpopular church, will be something entirely new under the government of the United States, and a stride backward towards the cruel intolerance and religious bondage of Mediæval times. Its proposal is not in the interest of the nation, but of a few adventurers who lust for place, power, and pelf, and are taking advantage of common prejudice against a misunderstood community to affect their nefarious personal ends. Through the toils, privations, and daring of the pioneers of this people the whole Rocky Mountain region has been opened to civilization, and the extension of the power and increase of the wealth of this great Republic. Shall the sons and daughters of those brave and loyal pioneers, many of whom aided in wresting this vast section on the Pacific slope from the dominion of Mexico, now be rewarded by total disfranchisement, and by subjugation to a handful of adventurers who have come here to take advantage of their labors and sacrifices?

We respectfully ask that the bills which we have named, copies of which are herewith forwarded, may receive the authority of law, either by enactment of Congress or by other means deemed suitable by your honorable body. We would urge this especially in regard to the election, jury, and appropriation bills, which are absolutely essential to the welfare of the Territory.

That the veto power of the executive, in this Territory of nearly two hundred thousand people, be made conformable to that in every other section of this great Republic, so that a two-thirds majority vote of the legislature may prevail over a single voice, and that an arbitrary, irksome, and anomalous one-man power shall no longer be absolute, in opposition to the expressed wishes of the people who suffer from this more than monarchal authority.

That the conspiracy to revolutionize the Territory and reverse the rule that majorities shall govern, may not prevail, but that your honorable body will view this matter in the light of justice and an understanding of the facts, postponing action until full inquiry into both sides of the question shall enable intelligence and calm judgment to take the place of prejudice and the unseemly haste that is born of it.

That the cumbersome, useless and expensive Utah Commission, which has fully served the purpose for which it was created, and which has in addition exercised both legislative and judicial functions without the slightest authority in law, be at once abolished and the voting citizens be permitted to regulate their own election affairs, at their own expense, under the laws of Congress and of the Territory.

That a commission of disinterested persons be appointed to quietly and fully investigate the affairs of this Territory, so that accurate information may be obtained concerning the people, their condition, progress, sentiments, prospects, and attitude towards the General Government, with a view to determining their qualifications for the responsibilities and duties of self-government, under the liberal constitution which they have framed and to which they invite the careful scrutiny of your honorable body.

And that in the event of Statehood being still further postponed, the people of the oldest, wealthiest, most populous, and most progressive Territory of the United States be relieved of the incumbrances and hindrances with which special legislation has weighted them down, and that the citizens who have broken no law may be permitted, like those of other Territories to legislate for themselves and to demonstrate their good qualities, their ability to regulate their local affairs, and their fitness for their high destiny as a vigorous Commonwealth which shall prove a strength and support to the Federal Union.

Let not our prayers be disregarded. We ask no special favor. We only appeal for fair treatment, for equal rights with other citizens, for common liberties, for simple justice. And while the God of nations will approve your fearless action in support of reason and of right, in opposition to abuse and wrong, a grand and united people redeemed from oppression will vindicate your good judgment and glorify your patriotism, and your memorialists as in duty bound will ever pray, etc.

ELIAS A. SMITH,
President of the Council, Twenty-seventh Session of the Utah Legislature.

Attest:
HEBER M. WELLS,
Chief Clerk.

W. W. RITER,
Speaker of the House of Representatives, Twenty-seventh Session of the Utah Legislature.

Attest:
HORACE G. WHITNEY,
Chief Clerk.

THE TIMBER QUESTION.

The following circular has been issued from the Department of the Interior to Registers and Receivers of U. S. land offices and special agents of the general land office:

GENERAL LAND OFFICE.
WASHINGTON, D. C., May 7, 1886.

Gentlemen: By virtue of the power vested in the Secretary of the Interior by the 1st section of the act of June 3, 1878, entitled "An act authorizing the citizens of Colorado, Nevada and the Territories to fell and remove timber on the public domain for mining and domestic purposes," the following rules and regulations are hereby prescribed:

1st. The act applies only to the States of Colorado and Nevada, and to the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, and Montana, and other mineral districts of the United States not specially povided for, and does not apply to the States of California or Oregon, nor to the Territory of Washington.

2d. The land from which timber is felled or removed, under the provisions of the act, must be known to be strictly and distinctly mineral in character and more valuable for mining than for timber or for any other purpose or use.

3d. No person who is not a resident citizen or bona fide resident of the State, Territory or mineral district, shall be permitted to fell or remove timber from the lands therein.

4th. Timber felled or removed shall be strictly limited to building, agricultural, mining and other domestic purposes.

All cutting of such timber for sale or commerce is forbidden. But for building, agricultural, mining and other domestic purposes each person authorized by the act may cut or remove for his or her own use, by himself or herself, or by his, her, or their own personal agent or agents only.

5th. No person will be permitted to fell or remove any growing trees of any kind whatsoever less than eight inches in diameter.

6th. Persons felling or removing timber from public mineral lands of the United States must utilize all of each tree cut that can be profitably used and must cut up and remove the tops and brush—or dispose of the same in such a manner as to prevent the spread of forest fires.

7th These rules and regulations shall take effect June 1, 1886, and all existing rules and regulations, heretofore prescribed under said act, inconsistent herewith, are hereby revoked.

WM. A. J. SPARKS,
Commissioner.

Approved:
L. C. Q. LAMAR, Secretary.

To this Governor Hauser, of Montana, sent the following, accompanied by a statement of the case by several Montana lumber mill owners:

TERRITORY OF MONTANA,
Executive Department,
Helena, May 22, 1886.

Hon. L. Q. Lamar, Secretary of the Interior, Washington, D. C.:

Sir.—I would respectfully request your personal attention to the accompanying letter in reference to Commissioner Sparks' recent circular. The signers are individual owners of small mills in this vicinity—the respective location of each I am familiar with—and their statement "that the land from which the timber is cut, is mineral in character," is true, as evidenced by the fact that every stream in this region contains placer gold; most of them are being worked, or have been worked out. Also in the fact that there are more or less gold and silver quartz leads staked on every square mile. Yet, as they truly state, a "rigid enforcement of the circular would compel them and nine-tenths of all the small mills in the Territory to shut down," as it would be very expensive, if not impossible, to prove that each particular acre of land from which the timber is being cut, was more valuable for the mineral at the time, than for timber, though perfectly evident that the district (say of ten or twenty miles square) was a thousand times more valuable for mineral than for timber or any other purpose.

This is the fact, as to two-thirds of this Territory. You can prove, or it is self-evident, that any district as a whole is many times more valuable for mineral than for any other purpose. Nevertheless it might be impossible to prove that some particular acre or even square mile was more valuable for mineral than other purposes; yet it would be entirely possible or even probable that that particular acre or square mile was the most valuable for mineral owing to the hidden or "blind" leeds or lodes therein contained and undiscovered and developed. Bear in mind that daily discoveries of new lodes and new mining districts demonstrate this fact.

There being no way to get titles to timber land or timber—the timber absolutely necessary to the working or developing of the mines and settlement of the Territory; Congress passed the law, as I take it, to overcome the difficulty, and to give the settler the right to cut the timber for "building, agricultural, mining and other domestic purposes," to be regulated by your Department. The object certainly was to encourage the development of the mines and the settlement of the Territory. It seems to me so long as the timber is not exported and it canno-