have our courts for the determination of testamentory affairs, the probate of wills, the administration of estates of decedents, etc., variously in the several States denominated surrogater courts, orphenis courts, probate courts, etc. These several courts approach nearer to the jurisdiction of, and in analogy to, the ecclesiastical courts of England than any other, and take the place in one system occupied by the latter in Great Britain, and are seemingly the successors of the ecclesiastical courts, so far as they are applicable to our condition and constitutions. So that when the Utah Legislature, as it was competent to do, desired to fix the tribunal to take jurisdiction of divorce matters, it properly and almost necessarily vested that jurisdiction in the tribunals most nearly assimilating to the ecclesiastical courts, and which *ex vi termini* "Probate courts" had jurisdiction already of one branch of the ecclesiastical law, to wit, testamentary causes. A court too erected and named by Congress itself in the organic act. And yet it is claimed that the legislature has no power to confer this jurisdiction upon Probate Courts, but that the District Courts have exclusive jurisdiction because the Organic Act confers on them "chancery as well as common law jurisdiction." The whole history of English jurisprudence, text writers and reports, contradicts the suggestion and overthrows the argument. The legislature, the quasi political sovereignty of the Territory, whose power extends "to all rightful subjects of legislation consistent with the Constitution of the United States, and the provisions of the Organic Act," had the right to determine which of the courts created by Congress should exercise divorce jurisdiction, and correctly and logically if not wisely named the Probate Courts for that purpose.

The counsel also cited as conclusions of the propositions that this court as a court of equity being a court of the United States has thereby jurisdiction of divorce cause, the decision of the Supreme Court of the United States Barber vs. Barber 21 Howard 582, therein Justice Wayne says: "We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony, either at an original proceeding in chancery, or as an incident to divorce *a' vinculo* or to one from bed and board."

And read from the opinion in same case of Justice Daniell concurred in as it was by C. J. Chase and J. Campbell as follows—"From the above views it would seem to follow, inevitably, that as the jurisdiction of the chancery in England does not extend to or embrace the subjects of divorce and alimony, and as the jurisdiction of the courts of the United States in chancery is bounded by that of the chancery in England, all power or cognisance, with respect to those subjects, by the courts of the United States *in chancery* is equally excluded."

Major Hempstead then referred to the cases of Norman vs. Lee 2 Black 499, and Orchard vs. Hughes 1 Wallace 73, and the repeated decisions of this court thereunder that it is a U. S. court and in chancery derives all its powers from English chancery laws are the rules of the Supreme Court of the United States.

The decision of the Court was deferred until a future day.

DISTRICT COURT.

This morning being the time set for the resumption of proceedings in the Hawkins' trial, the attendance at the District Court was much larger than usual, a novel feature being the presence of probably at least a hundred ladies. The court was at last compelled to order no more to be admitted, on account of the danger of the floor breaking through. At one time cries of "keep still, or you'll go through," caused a rush to the door, and danger seemed imminent, but order was restored and no harm done.

Mr. Miner, one of the defendant's counsel in the Hawkins' case filed the following motion:

Territory of Utah,	In the Third District in and for said Territory, September term, A. D. 1871.
Salt Lake County.	Hon. J. B. McKean, Judge.
The People of the United States in the Territory of Utah, *vs.* Thomas Hawkins.	Indictment for Adultery.

Now comes said defendant, Thomas Hawkins, by his attorneys, and moves the court to discharge the defendant herein for the following reasons, to wit:

That the verdict rendered in the jury in said case is such that no judgment other than to discharge the defendant can be rendered thereon, said verdict being in legal contemplation and effect equivalent to a verdict of "not guilty."

That the statutes of Utah Territory in such case made and provided require the jury in all cases not capital to find in their verdict, if against the defendant, the nature and extent of punishment. That the verdict of the jury in said case does not state the nature or extent of punishment as appears by the verdict rendered by the jury in said case, as by the statute aforesaid prescribed, and that said verdict is therefore equivalent to a verdict of not guilty. They therefore ask for the discharge of the defendant and without delay.

MINER & FITCH,
Attorneys for Defendant.

The motion was ably argued by Mr. Miner, and an attempt at rebuttal was made by the counsel for the prosecution, when the court ruled against the defendant, his decision being as follows:

"It has been my intention from the beginning, it is still my intention, to allow the counsel for the defence, to raise every possible point in this case and to discuss it just so long as they please without limitation. In regard to the question now before me, I must say that no legislature, whether State or Territorial, no legislature controlled by a constitution, has a right to give to a court or to a jury unlimited control over the property, liberty or lives of accused individuals. If the point raised by Mr. Miner is well taken, then the jury in this case might have rendered a verdict setting the damages against the defendant at one million dollars or five millions, or any other sum; and the nature and extent of the punishment at one hundred years imprisonment; or they might on the other hand, have stated the damages at one cent, or the extent of the punishment at one minute's imprisonment in their, not discretion but, caprice. No legislature has the right to give either to a court or jury any such unlimited power and I must over-rule the motion."

The Prosecuting Attorney then called the attention of the Court to the fact that this was the day set for the defendant in the above mentioned case to be sentenced, and he, by the order of the Court, was brought into the Court room for that purpose; but his counsel interposed, stating that they wished to file a motion in arrest of judgment and for a new trial, and their bill of exceptions would have to be founded on the proceedings in the trial. They had not yet been able to obtain a copy from the official short-hand reporter of the Court, and would not be able to do so until the end of the week. In view of these facts, next Saturday was fixed for taking further action in this matter.

The Hawkins' Case--The Accused Sentenced.

This morning the case of the People of the United States in the Territory of Utah *vs.* Thomas Hawkins, charged with adultery, was again called up. The following motion for a new trial was filed by Mr. Miner, one of defendant's counsel.

Territory of Utah,	In the Third District in and for said Territory, September term A. D. 1871.
Salt Lake County.	Hon. J. B. McKean, Judge.
The People of the United States in the Territory of Utah, *vs.* Thomas Hawkins.	Indictment for Adultery.

Now comes said defendant, Thomas Hawkins, and moves the Court to set aside the verdict of the jury herein rendered, and to grant a new trial in said case, on the grounds and for the reasons hereinafter set forth.

1st—That the said verdict is contrary to the law and the evidence of the case, and that said verdict is not supported by the evidence given on the trial of said case.

2d—That there was no testimony given or offered on the trial of said case, establishing or tending to establish the fact that there was an actual legal marriage-in-fact solemnized between said defendant and the witness, Harriet Hawkins, in accordance with the laws of England, in which kingdom the testimony of Harriet Hawkins showed the marriage, if any, to have been solemnized.

3d—That the exhibit "A," purporting to be a marriage certificate, was improperly admitted in evidence in said case, there having been no testimony offered or given, tending to prove the genuineness or validity of the same, and no proper proof given relating thereto.

4th—That there was no testimony whatsoever offered or given, on the trial of said case, relative to the second count in said indictment, which charges a specific offense.

5th—That the Court erred in withholding from the jury in said case, on their retiring to consider on their verdict, the indictment; and also in permitting the jury to take with them to the jury room, on retiring to consider their verdict in said case, the Statutes of Utah Territory, in which is contained the law and the section of law under which the indictment in said case was found, and the prosecution supposed to be conducted in said case.

6th—That the Court erred in its instruction to the jury in said case, being in words as follows—"Now, gentlemen, if from the evidence you believe that between twenty-one and twenty-two years ago, be the same more or less, the prisoner at the bar did take the witness. Harriett Hawkins, as his lawful wedded wife, and that she did take him as her lawful wedded husband, and that the ceremony which she has testified to did take place, that the prisoner at the bar afterwards procured and gave her the certificate which has been produced here, that they thereafter lived together as husband and wife, and came to this country, and that while here, the prisoner at the bar, intentionally and willingly, did have carnal sexual intercouse with Elizabeth Mears or Sarah Davis, as charged in the indictment, if from the evidence you believe that, then I charge that he is guilty of adultery under the law;" said instruction assuming, among other things, that if the jury believed from the evidence that the facts existed as stated in said instruction, that the existence of such facts was sufficient evidence to prove a legal, actual marriage between Harriett Hawkins and defendant, according to the laws of England.

7th—That the Court erred in refusing and neglecting to charge the Jury in said case, in the words as asked by counsel for defendant, which were as follows: "That it was the duty of the prosecution to show an actual legal marriage of the defendant with Harriet Hawkins, according to the law of the place where such marriage may have been shown on evidence to have been solemnized. And if the jury believe from the evidence that the prosecution has failed to make such proof, the jury in this case must find defendant not guilty;" the Court remarking and charging as follows: "I have substantially charged you as to that doctrine in other words, and I repeat it. You must believe from the evidence that the ceremony took place as the witness related, that they have cohabited together as husband and wife, as she related, and you must believe from the evidence that there was a lawful marriage."

8th—That the Court erred in refusing to give instructions Nos. four and eight, and reading the instructions so refused in the hearing of the jury, said instructions being asked by defendant's counsel, also in adding the verbal addenda to the instruction asked by defendant's counsel, numbered second, which was in the words following: "Yes, gentlemen, I say so, and I say to you that the defendant can have but one lawful wife at the same time. I say to you that if you believe, from the evidence, he married the principal witness, Harriett Hawkins, as she has stated, any subsequent marriage with any other woman was null and void."

9th—That the officers in charge of the jury and the jury themselves acted improperly while said case was on trial in this, amongst other things, that after the argument of counsel for the defense had closed, the officers in charge of the jury conducted the jury through the streets of Salt Lake city from the court-room to the saloon of Charles Trowbridge, on East Temple street, which street and the side-walk thereof was at the time thronged with people other than the jurors in said case, who did mix and mingle with said jurors, and that said jury, while at and in said saloon, did drink spirituous liquors, to wit whisky, brandy and wine, and that while at said saloon, said jurors did mix and mingle and converse with other persons, not jurors in said case, and that on Thursday night during the night one of the officers in charge of the jury did play at cards with the jury at a game commonly called poker, all of which tended to prejudice the rights and interest of defendant herein. He therefore asks that said verdict be set aside and a new trial be ordered.

A. MINER,
Attorney for Defendant.

The several points were argued in detail by Mr. Miner, but were overruled, *pro forma*, by the Court.

A motion was then filed by defendant's counsel in arrest of judgment, upon which no argument took place; this was also over-ruled by the Court.

The accused was then arraigned for sentence, which was pronounced by the Court in the following words:

Thomas Hawkins, I am sorry for you, very sorry. You may not think so now, but I shall try to make you think so by the mercy which I shall show you. You came from England to this country with the wife of your youth. For many years you were a kind husband and a kind father. At length the evil spirit of polygamy tempted and possessed you; then happiness departed from your household, and now, by the complaint of your faithful wife and the verdict of a law-abiding jury, you stand at this bar a convicted criminal.

The law gives me large discretion in passing sentence upon you. I might both fine and imprison you, or I might fine you only, or imprison you only. I might imprison you twenty years and fine you one thousand dollars. I can not imprison you less than three years nor fine you less than three hundred dollars. It is right that you should be fined, among other reasons to help to defray the expense of enforcing the laws. But my experience in Utah has been such that were I to fine you only, I am satisfied that the fine would be paid out of other funds than yours, and thus you would go free, absolutely free from all punishment; and then those men who mislead the people would make you and thousands of others believe that God had sent the money to pay the fine, that God had prevented the Court from sending you to prison, that by a miracle you had been rescued from the authorities of the United States. I must look to it that my judgment give no aid and comfort to such men. I must look to it that my judgment be not so severe as to seem vindictive, and not so light as to seem to trifle with justice. This community ought to begin to learn that God does not interpose to rescue criminals from the consequences of their crimes, but that on the contrary He so orders the affairs of His universe that, sooner or later, crime stands face to face with justice and justice is the master.

I will say here and now, that when ever your good behavior and the public good shall justify me in doing so, I will gladly recommend that you be pardoned. Thomas Hawkins, the judgment of the Court is that you be fined five hundred dollars, and that you be imprisoned at hard labor for the term of three years."

The prisoner was then remanded to the custody of the Marshal. Mr. Miner asked the Court what bail would be taken, pending the taking of the case to the Supreme Court of the Territory. The question was not answered, its consideration being postponed by the Court to a future day.

In arguing the several propositions of his bill of exceptions on which was based the application for a new trial in the above case this morning, Mr. Miner read two affidavits, one made by himself, the other by Dr. Groves, of this city, as to the improper conduct of the jury. But as the time at which the the game of poker, alleged to have been played by them, occurred, was not specified, that is, it was not shown whether it was before their verdict was reached or not, and the allegation was only made on hearsay, Mr. Miner stating that one of the jurymen was his authority for making the statement, the Court ruled that nothing improper had been shown, and that the affidavits were unsupported; he said if any of the officers of his Court, while in the discharge of their duties, were guilty of improper conduct, it was his duty to punish them and he would do so, but as in this case no improper conduct had been proved, the allegations amounted to nothing more than a libel and a scandal. No such pettifogging as that would be allowed in this court; lawyers must discuss questions like lawyers there, and the Court very peremptorily ordered that Mr. Miner, on Monday morning, should show cause why he should not be fined and disbarred for making unsupported charges against officers and jury of this Court.

QUERY FOR THE SORROWFUL JUDGE.—If a man must be severely fined and imprisoned for "committing adultery with his own wife," against which there is neither law nor commandment, what must be done to the man who has committed adultery with his neighbor's wife, against which there is both law and express commandment? If the Judge cannot answer that question satisfactorily, he may very appropriately assume the character of the Judge with the "Rueful Countenance."