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CHARLES W. PENROSE, EDITOR.

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REVIEW OF GOVERNOR MURRAY'S REPORT.

IN to-day's supplement we publish in full the report of Governor Eli H. Murray to the Secretary of the Interior. We do so that the people of Utah may be fully informed as to the statements, arguments and recommendations officially made by the Executive of the Territory, and that we may direct attention to his misrepresentations, sophistries, and endeavors to do them injury. In an interview given to a representative of the New York *Herald*, Mr. Murray repeated the main points of his report, and the account published in that journal has formed the basis of articles in many prominent newspapers. We ask them to give attention to what we have to say concerning this report, that they may, if they will, be undeceived on several important points, and be placed in a position to discourse truthfully and intelligently on the "Mormon" question.

The Governor commences by combatting the idea entertained by conservative and rational people, that time and pacific measures will right such wrongs as exist in Utah. This is done in order to prepare the way for the suggestion that military force be employed in executing civil process in this Territory. He argues that "times come in the history of all States when military and is necessary to support civil authority," and the militia of the Territy being not available, it therefore only remains that *the military force* of the United States be used "for the execution of process out of the courts of the United States." No reason is given for this extraordinary conclusion. It is not claimed by the Governor that there has been any forcible resistance to the process of the courts. He cannot point to a single instance of the kind. It is not shown that the Marshal or his deputies have ever met with any difficulty in the discharge of their duty. As a matter of fact, the officers of the law here have been able to serve papers upon the highest dignataries of the "Mormon" Church as well as upon its humblest members, without let or hindrance. And the spectacle of twelve thousand persons, including the most respected and influential men and women among the "Mormon" people quietly submitting to disfranchisement and exclusion from office, under the workings of a law and regulations made by its administrators, regarded as in violation of the plain wording of the national Constitution, ought to be enough of itself to dissipate the idea that military force is necessary to aid the civil authority in Utah.

The Governor's next assertion is that "since 1852 there has at no time been a lawful Territorial government;" of course he means in Utah, although he does not say so. To substantiate this absurd and unwarranted statement, he quotes from the Organic Act a provision in regard to the manner in which certain officers not named in the Act were to receive their appointment, and proceeds to endeavor to make it appear that because his rendering of that provision has not been carried out, the Legislature has been engaged in "nullifying" the laws of Congress and has been carrying on an unlawful government. The facts are these: There was a division of opinion between the Legislative Assembly and former Governors as to the proper method of filling certain territorial offices created by acts of the Legislature and purely local in their character. They were at first filled by joint vote of the Assembly, in pursuance of territorial law. But subsequently the law was changed, and those offices were filled by popular vote. The Acts of the Legislature making this change were signed by the respective Governors holding authority from the General Government at the time of their passage, and the Supreme Court of the United States has sustained the action of the Assembly in two different instances involving the same principle. In the celebrated Englebrecht case, on appeal to that Court, it was argued that the Territorial Marshal of Utah, who summoned the jurors to try the case in the lower court, was elected by the Legislature and not appointed by the Governor, and that therefore his acts were void. The Supreme Court of the United States in rendering its decision that the acts of the Marshal were valid, said in regard to the law providing for the election of the Marshal:

"In the first place we observe that the law has received the implied sanction of Congress. It was adopted in 1859. It has been upon the statute book for more than twelve years. It must have been transmitted to Congress soon after it was enacted, for it was the duty of the Secretary of the Territory to transmit to that body copies of all laws, on or before the first of the next December in each year. The simple disapproval by Congress at any time would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body."

The other instance involved the right of the Attorney General of this Territory to his office, and the decision, given at the October term of 1873, will be found in 18 Wallace. The Court said:

"The question is * * * 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 as Attorney General of the Territory."

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"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.

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At all events, it has sufficien basis for its support to establish the *conclusion that there is no necessary* conflict between the Organic Act 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 principle involved in the cases of the Marshal and Attorney General is the same as in those of the Territorial Auditor, Treasurer, Superintendent of District Schools, Sealer of Weights and Measures, etc. They are elected by the people in pursuance of acts of the Legislature signed by the Executive, and—according to the doctrine of the Supreme Court of the United States—approved by Congress. And it is because Governor Murray has not been able to appoint some of his favorites to fill these places which are properly in the gift of the people, and because the very small minority—which he represents—have not been able to gain possession of the treasury of the Territory, that he now makes the untruthful and nonsensical statement to the Secretary of the Interior, that "since 1882 there has been at no time a lawful Territorial Government." The incorrectness of this assertion we have shown, the absurdity of it will be seen at once when the nature of the offices is considered which he so anxiously desires to fill by appointment. They are not part of the government of the Territory, but subordinate offices created by the territorial government as aids and auxiliaries to the conduct of public business. So that if those positions were filled improperly, the integrity of the territoral government would be in no wise affected. And in view of the rulings we have quoted, the charge of "nullification" which Governor Murray uses so freely, but the meaning of which he evidently does not understand, applies as much to the Supreme Court of the United States and to Congress itself as to the Legislative Assembly of the Territory of Utah.

His next charge of "nullification" is in regard to the workings of the Hoar Amendment, which simply provided for the temporary filling by the Governor of offices made vacant through the failure of the election of August 1882. The actual vacancies occurring from that cause were very few, most of the incumbents holding their offices not only to the end of a certain term, but also "until their successors were elected and qualified." Governor Murray was not content with appointing his friends to offices actually vacant, but undertook to fill, in addition to some territorial offices, all the local offices in the counties and precincts of the Territory, some of which would not in any event be vacant for from one to two years irrespective of the hold-over clause. The dispute over this matter was referred to the courts, and the "technicalities and delays of law consequent upon appeals and stay of proceedings," Governor Murray declares, "made the law a nullity." Is not this remarkable doctrine? What remedy has an individual or a community against usurpation and excess of official authority except recourse to judicial tribunals? What are the civil courts established for but to settle questions of law and equity? As the outcome of his argument, that appeals to the courts and *the consequent technicalities* and delays, are nullification, he reaches this conclusion: Therefore Congress must provide other and different agencies to enable a Governor to take care that the laws are faithfully executed." That is, the people of Utah lawfully contested his acts of usurpation, and therefore Congress should authorize the use of the military against them. Governor Murray, with his usual disingenuousness fails to state that the whole matter was settled by the election of 1883, held under the auspices of the Edmunds law Commissioners.

The next statement to be noticed is in reference to Church and State, in which the Governor pronounces his own doctrine "so infamous as to deserve the condemnation of all men." Of course he did not mean this, but his language conveys no other signification. Waving this lingual blunder and his inaccuracies in attempting to relate the history of the "Mormons," we come to the incorporation by local law, of the Church of Jesus Christ of Latter-day Saints. The Act of Incorporation is given in full, in his report, and a careful reading of it will completely refute the construction put upon it by the Governor, that "its purpose was to confer power upon ecclesiastical courts to visit pains and penalties even to that of death." For the Act itself limits that power to matters "relative to fellowship" and requires that the rules, regulations, etc., shall relate to "the religious duties of man to his Maker," and further provides that they must be in conformity to the Constitution and the local laws. As a matter of fact the Church thus incorporated makes no claim of authority to inflict any penalty beyond those that are purely religious, the extreme penalty being excommunication, involving nothing more than loss of fellowship and Church membership. It has exercised no other punitive authority. And the insinuation that it has established courts exercising powers similar to those of the civil courts is utterly and entirely untrue.

The necessity for this act is shown in the Governor's own statement that the courts have admitted its validity in cases of suits and prosecutions in which the Church property was involved. His object is to show that the Territorial Legislature has passed laws "respecting an establishment of religion," which Congress (not the Assembly in question) is prohibited from doing by the Constitution. But his sophistry is made too plain for his purpose by the quotation of the Act of Congress in relation to this very act of incorporation. Congress, by the law of '62, it will be perceived, repealed so much of the Ordinance of Incorporation, and all acts of law "which establish, maintain, protect or countenance the practice of polygamy," but declared that this repeal is to be "so limited and construed as not to affect the right of property legally acquired under the Ordinance heretofore mentioned." In this legislation Congress exposed itself to the awful condemnation of the Governor of Utah, for it thus validates and confirms that Act or Ordinance of Incorporation, except the part relating to polygamy. But the act contains no sentence or expression that can be fairly construed into any reference to polygamy. For the right of the Church to solemnize marriages is only recognized as a "constitutional and original right *in common with all civil and religious communities*," no less and no more. But even supposing that any countenance is given to polygamy in that Act, it is so far repealed by Congress, and the rest of the Act is really made and constituted an Act of Congress, on the principle enunciated by the Supreme Court of the United States as quoted above, and by specific acknowledgment of the validity of all the Aot except that part which relates to polygamy.

If, then, the passage of this incorporation Act is law "respecting an establishment of religion" within the meaning of the clause in the Constitution, Congress is guilty of the charge of violating that instrument, and it will be found on inquiry that scarcely a State in the Union is free from the same offence. For religious bodies and societies have been incorporated all over the United States for similar purposes to those specified in the Utah Act of Incorporation, so that property may be lawfully held and the title thereto be legally vested. Governor Murray's bit of special pleading is unworthy of a commonly intelligent schoolboy. It is the same with his attempt to make capital out of the manner in which Church property *is* held in this Territory. Does he not know, and is not every informed person aware that other churches hold their property in exactly the same manner as described in the Governor's report and actually denounced by him as a crime? The Catholic Church, as a whole, owns far more real estate in either of the Territories than to the value of $50,000. But it is vested in severalty in the Bishop or priest or some local church dignitary for the use and benefit of the members in the district or locality. Apply the same rule to the Episcopal, Presbyterian or Methodist church that the Governor attempts to impose on the Church of Jesus Christ of Latter-day Saints, and they would all be guilty of the great "crime" of having more church property than the law allows and of "nullifying" a law of Congress. And how about the Constitutional restriction concerning the passage of laws "respecting an establishment of religion?" If Governor Murray's application is correct, then Congress has violated that clause by legislating in regard to *this Church property*, whether it be of the "Mormon," the Catholic or any other church, and the very law limiting ecclesiastical real estate possessions to $50,000, is, by his reasoning, unconstitutional and void, and his whole argument based upon it falls to the ground.

The incorporation of a company organised for the purpose of adding to the population of the Territory by assisting poor people to emigrate, is next made to do duty for the Governor as "an establishment of religion," and he further asserts that by this act of incorporation "the whole system of immigration was handed over to a corporation under the control of the Church." This is just as nonsensical as the rest of his sophistry. The incorporation of the P. E. Fund Company was not exclusive. It did not prevent the organization and incorporation of any number of other companies for similar or other purposes, and the necessity for its incorporation was the same as for the incorporation of the Church—that it might have a legal existence so as to hold property in its own right for the transaction of its legitimate business.

The grants by the Legislature to different persons named by the Governor were not "a primary disposal of the soil, but merely possessory rights for certain specified purposes, given at a time when the land was not in market and no United States title could be obtained. Roads had to be made into canyons, bridges to be built, ferries constructed, etc., and the parties leading out in the work, which was done at great labor and expense, were secured in their rights for the time being. When the lands in this region were surveyed they had to be purchased and title secured as in other parts of the public domain, and the acts of the Legislature became obsolete. They have not been upon the statute books for many years, and when they were in force they conveyed nothing more than a security to "the right of possession," which was the only title any one could hold in land in the Territory until its sale by the Government. And yet the Governor, to make up a plausible story to defame the people of Utah, calls this "a primary disposal of the soil;" and because certain individuals who obtained these rights of possession belonged to or were leading men in the "Mormon" Church, he calls the grants, "law respecting an establishment of religion." What would they have been if those men had happened to be members or preachers of the Methodist Church? According to his logic, no ecclesiastic must own real estate on the ground that a law securing a minister in such a right would be one "respecting an establishment of religion." It is easy to see that the Governor is no lawyer, and just as plain that he lacks good judgment, or he would not have adopted the nonsense of the Salt Lake pettifogger who prepared for him his report.

The statement of the Governor about the District Schools is made intentionally to mislead. He has seen but very few of the school houses in Utah outside of Salt Lake City, and knows very little about the workings of the school system or anything else of a public character in the Territory, because he moves in a narrow circle, and takes no pains to obtain information other than that conveyed by a small clique of malcontents. The school system in Utah is entirely separate from and independent of the Church, and the title to school property is vested in trustees elected by the registered voters, and is not mixed up with Church property in any way. A city lot, it should be understood, is one acre and a quarter of ground, and a meeting house and a school house may be on one and the same lot or part of a lot, and be owned each by its proper possessor. The records in our respective counties contain the proofs that the Governor's insinuations on this point are conspicuously inexact. The District Schools are not denominational or sectarian, and are open to the children of all people, irrespective of creed or party, and no tenets are taught therein.

The Deseret University is an educational institution entirely non-sectarian. No religious creed enters into its course of instruction. It is an establishment under territorial law, receiving support from the territorial treasury. The people's elected legislators, at the session of 1882, made an appropriation for a butiding in process of erection for the University, and Governor Murray vetoed it because he could not have the appointment of its regents and other officers. They were elected according to law. The people were not allowed to spend their own money in promoting secular education, because of the ambition of Governor Eli H. Murray, and—to use his own pet phrase—because of his nullification of the laws which he was under oath to support and execute. The proof of this is in the Journals of the Legislature for 1882. We will not take up space to show how in numerous instances the Governor has himself "nullified" the laws as we could, if necessary, but will briefly consider his recommendations.

He says, "I now ask that *all laws* passed by Congress be repealed." Very modest is it not? What he means, no doubt, is that Congress repeal all its laws relating to Utah. But if this is not done, he wants the Utah Legislature to be required to do certain things under the threat of dissolution and the establishment of a despotism in its place. Among these requirements they are to "repeal in full all laws passed by former Legislatures respecting an establishment of religion," and those "under which the laws of Congress have been nullified," and to pass laws against polygamy. Two of these things are impossible because there are no such laws in our statute books to repeal. And the other thing has been done by Congress, making it a work of supererogation on the part of our Legislature. If the latter body were to repeal the laws of Congress it would give those laws no further force, and if it were to pass anything on the question differing from them it would be void. And yet if the Legislature does not perform these impossible things and that needless thing, it is threatened by Governor Murray with destruction and to be *supplanted* by a Legislative Commission! and what is that? Why, a body of three men, or may be thirteen men, appointed to make laws for a hundred and seventy thousand people, none of whom are to have any voice in their appointment nor in the election of those officers who do appoint them. And this, Governor Murray, with another enunciation of his peculiar logic, claims would be "a government not only for the people but by the people!" Comment is needless.

To justify the anti-republican, anti-democratic proposition to set up an oligarchy in Utah, Governor Murray cites the course pursued by the Government in relation to the