question. Is it possible to contemplate it? What could they have done by laying aside this important business, unless it was to create an autocrat in Utah, giving him the right to select an imperial council; unless it was to place, so far as the law was concerned, a functionary in Utah, who might hold his patronage for plunder, and the people for Helots. Contemplate, if you please, an American Congress, in an American land, mapping out one of the fairest sections of its country, and raising up what might be regarded as an autocracy in place of what some are pleased to call a theocracy! What can they mean? Can you contemplate anything other than the fact, that these "grave and reverend senators," stopped in the midst of important business, and with bated breath, enacted the amendment to the civil appropriation bill? Why, counsel is distinguished, he is able, so far as ability, brilliancy and illumination of mentality are concerned, he would serve well the imperial functions of the togaed Ulpian, or the muffled Gortschakoff, and his circular might be equivalent to a decree or a ukase. But, if your honor pleases, in spite of this impossibility of contemplation, I must be permitted to differ with the gentleman in respect to the construction of this provision and I hope he will take no offense at what I have said, for I meant none. Soon we may hear him roaring like the fierce Numidian lion, but though I am to annihilated, I must assert that I cannot contemplate such a condition as that which is suggested in the "The Main Question."

Continuing, he said that he insisted as a legal proposition that the defendants were entitled to hold office until their successors were elected and qualified; and no successor having been qualified at the August election, there was consequently no vacancy. The appointees of the Governor, therefore, were not successors on the ground that there was nobody to succeed. There must be an absence of any person to exercise the functions of the office before this extraordinary power of the Governor to appoint arose. The intention of Congress was manifested upon the face of the statute. They well knew the object which they intended to accomplish. Congress did not intend to create a vacancy; Congress intended not by this legislation to oust an incumbent who held his office *de jure*. If Congress did not intend, in order to make room for an executive appointment, it had used the strangest kind of language to convey its meaning. The theory of the government is that the people are the source of legitimate power; and by no interpretation could the act be construed to mean that there should be a change in the manner attempted by the Governor. Mr. Rawlings again reasserted his proposition that to entitle a party to obtain remedy by mandamus he must show a clear specific title to office, and that he was without any other remedy in the ordinary course of law. He quoted a great many authorities upon this subject, all of which went to show that the plaintiffs in this case, not having shown any clear specific title, could not obtain a remedy by mandamus.

At this stage the court suggested an adjournment, it being now 5 o'clock, and an adjournment was accordingly taken till this morning at 10 o'clock, at which hour Mr. Rawlins will resume his argument.

TO-DAY'S PROCEEDINGS.

The court met this morning at 10 o'clock; Chief Justice Hunter on the bench.

Mr. Rawlins resumed his argument. He commenced by taking up the question of mandamus, the point at which he stopped last evening. He quoted authorities upon the subject, and maintained that where a person is in the actual possession of an office under an election or commission, and is thus exercising his duties under color of title, the validity of his election, or his right to the office, or its possession, could not be tried in mandamus to admit another person. The authorities sustaining this proposition were simply overwhelming. But there was another reason why mandamus could not lie in this case even if it were claimed that these appointees held the right to office by the authority from the Governor. mandamus never lies except to perform a duty resulting from an office, trust or situation, never for the purpose of enforcing a purely private duty; it issues to an inferior tribunal, court or officer, for the purpose of enforcing a duty resulting from an office. Other parties were mere interlopers; they were merely private parties; the office must be vacant before parties could make a legal title. And whatever horn of the dilemma the gentlemen upon the other side saw fit to take in this matter they would find the law against them in this remedy. Counsel would scarcely contend that they had no other remedy. They had remedy in *quo warranto*, and there was no statute that pretended to take away that power. He thought, therefore, that the defendants, having shown that they were entitled to hold office until their successors were elected and qualified,—although no election had taken place at the regular election for such offices—must continue in office *de jure*. The authorities, at least, were abundant upon the proposition; that however invalid may have been their appointment, they were officers *de facto*; that the power giving a Governor power to fill vacancies did not imply power to create vacancies; that the power to fill a vacancy did not grant the power to make an appointment of a successor in order that that successor should supersede an actual officer *de jure* or *de facto*. There must be an *actual* vacancy pre existing as a condition precedent to the authority of the Governor to act at all; this must affirmatively appear. The history of the act in question, and the *result of the* proceedings prior to its passage, all went to show that that was the intention of Congress. This was implied in the *arguments and minds of* those who enacted the statute. That the defendants were entitled to their office *de jure* could hardly be made a question in view of the law upon the subject. The remedy the plaintiffs had resorted to was entirely inappropriate, and could not lie in this case. They could not call upon defendants to show title. There must be an entire vacancy before remedy could be sought in mandamus. If such were the case—and he contended it was—then there was nothing left of this case at all. The defendants, as he had said, held there office *de jure* and those who attempted to deprive them of their rights might properly be called rebels, inasmuch as they sought by illegitimate means to usurp a power which had never been granted. This concluded the argument of Mr. Rawlins.

Mr. Dickson, in behalf of the plaintiffs followed. He claimed that the case at bar divided itself properly under two branches, one of which was that it was proper and right to determine the right of the respective parties; the other was, what the right of the respective parties was. The question then arose whether plaintiff's counsel had, under a writ of mandamus, adopted the appropriate remedy.

He fully admitted that the general rule was that mandamus was *not* a proper remedy to determine the right to a public office. But at the same time claimed that there were certain well recognized exceptions to this general rule, as there were to almost all others; and that, the exceptions in this case were as well founded as the rule. Council then cited *from* law authorities four exceptions to this rule, that even if only one of the exceptions to the rule could be established as pertinent to the case at bar; that mandamus was a proper remedy, that where simply a question of law was at issue that this was the proper mode of remedy, and that the relator could not be forced to proceed under a writ of *quo warranto*. On the contrary, where the relator had an apparent legal title, and was properly qualified, he held, that the court should put him with the apparent legal title in the office, and force the other party to liquidation under the law, and prayed that the court would rule accordingly. Against being compelled to sue under a writ of *quo warranto* he set up, as an objection, the shortness of the term of office (eight months); that if the writ of mandamus were quashed, the question of facts would then have to be determined, and he apprehended that a jury trial would be claimed by the other side; and that the case (unless both parties desired otherwise) would take its place upon the calendar, and a trial could not be reached until January next, by which time the offices would be nearly expired; and that even if judgment should be then declared in favor of plaintiffs, an appeal would doubtless be taken to the Appellate Court, and before a decision could be given the office would be gone. Therefore no benefit to the people could be reaped from such a course, showing that to sue under *quo warranto* was not an adequate remedy of relief.

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2 p. m.

Mr. Dickson proceeded with his argument following and repeating the same line of reasoning, in favor of mandamuses and against *quo warranto* proceedings. He contended that when his honor came to examine the cases which he had cited, he would find a respectable line of authority holding that where a question had to be determined when the alternative writ had been made, the court had simply to decide the question of law; that it had been repeatedly held that in such cases a writ of mandamus was a proper remedy. Thus they brought themselves within the first exception to the rule, that the question to be determined was purely a question of law. They also came within the second exception, inasmuch as the defendants came into court with an apparent legal title, with the commission of the Governor. Again, they contended they came clearly within the third exception, in that *quo warranto* would cause unreasonable delay before a determination could be reached, and this remedy by mandamus was perfectly right. And now counsel was brought to the question, whether or not these offices were vacant at the time the Governor undertook to fill them. That question came face to face with the intention, meaning and effect of the legislation known as the Hoar Amendment. They contended that the Hoar Amendment meant something; it had a purpose, an object. If the position of the gentleman upon the other side was the true one, then the legislation in question was shorn of all validity and force, and was a meaningless, purposeless, enactment. His honor's attention had been called by the other side to what the sages of the law had said, and the court had been reminded of the diffidence which courts manifested when called upon to declare a statute unconstitutional. Yet without *hesitation, the other side* had undertaken to say that the whole amendment is a dead letter, that it could not take effect; that it was, in *fact, futile* and void. Now, notwithstanding the blood-curdling mirth of counsel who opened the argument in this case, the speaker contended that there was something very amusing in the spectacle of the people's representatives assembled in the national Congress, manifesting the anxiety and solicitude they did about the passage of this law,—that after all this they only passed a law which was of no use, or a law that could accomplish nothing. When the court was called upon to pass upon the effect of a law, if any doubt existed as to its proper effect or scope, it became the duty of the court to put such construction upon the law as would best harmonize with the general design of said legislation. In doing this it would be *his honor's* duty to look into the circumstances that called *forth* this legislation; it would be necessary to look into the history of the people of the Territory and see what it was that Congress intended to get at by passing such an act. And he thought it right to allude briefly to some of the circumstances that brought *forth this* legislation. He was not in court, said counsel, to assail the motives of any man, class or church. It might be that the teachers of this people, and the people against whom this legislation was leveled, honestly believed that it was their duty to obey a higher law than any human law of the country, and from the standpoint of individual conscience, he was more than ready to believe that the vast majority of the people were without reproach in regard to their belief. But they had nothing to do with the question as to whether their belief was right or wrong, considered from a moral standpoint. But there was a social and political aspect to the question, which was that Congress undertook to deal with an evil which is said to exist in this Territory. They must find out what that evil was, and by what remedy Congress proposed to remove it. It would be found, when this question was looked at, that from the early colonization of the Territory of Utah there had been a church which from all time had held in her hands the destinies of the people here, a church that had not only controlled and directed in matters of religious faith and practice, but had controlled in civil affairs as well. That church, during all these years, following the dictate of conscience, he was willing to admit, had instilled into her adherents a practice which the people of this nation had said must no longer exist. Not only that, but in order to strengthen her power as a church, she had laid her hands upon the civil government of the Territory, and for years had controlled the civil affairs of this people, and by this power over civil affairs she had been enabled to set the administration of the laws of the nation at defiance. This was the condition of affairs Congress was called upon to deal with. Everybody who had read the Edmunds bill knew that the object of that bill was the suppression of polygamy. And to aid in that suppression, it was one of the objects of the bill to weaken the church's hold upon civil affairs, to exclude from office all polygamists. Here then was the object of the bill. They knew what the evil was against which this legislation was directed. It was the suppression of polygamy, and to weaken the power of the church over civil officers was one of the objects of the bill. The Hoar amendment had given the Governor power to fill vacancies in consequence of failure to elect. The cases in question came under that law. It was true the other side maintained there were no vacancies; that in the most of cases, in consequence of there being no election the present incumbents held their offices until their successors were elected and qualified. If that was the correct rendering of the law then it was clear as the noon-day sun that the Hoar *amendment* was a dead letter.

Council, however, claimed that when the amendment referred to was enacted there was not a single qualified voter in the Territory. If Congress had power to take away from or suspend the right to choose successors, and at the same time continue the incumbents in office, it might, on that line of argument, sustain their power to continue in office 10 years, and yet they would continue to hold over.
And this being the case they would say, if an attempt were made to oust them, that the statute under which we were elected empowered us to hold over until our successor is elected and *qualified; and there* being no such successor we held over. Counsel would say in answer, that they cannot hold over because the law under which they were elected was no longer in existence; that that power had been taken away from the people, and that the merits of the case had been changed since the present incumbents were elected. This concluded the argument.

The Court then adjourned until to-morrow morning, when Mr. Marshall will continue the argument in favor of the plaintiffs, and Col. Merritt will close on the part of the defendants.

LIST OF LETTERS.

Remaining in the post office at Salt Lake City, Oct. 12, 1882, which if not called for within one month, will be sent to the Dead Letter Office.

LADIES' LIST.

A	Grow J	Pendleton E
Allsworth S	H	Pierce E
Angel Mrs	Hight M	Pamlin M E
Arnold G	Hardy M	Palmer M E
Andrews E H	Hier M	Pratt R
Anderson E A	Hanson M	Pollock K S
Anderson A	Huskinson S	R
Alexander A	Horrocks S	Roack F
Alston A	Hatfield S	Robson E B
Anderson A M	Haglund M	Roberts E P
B	Hardy L	Robertson E
Butterworth S A	Hunt J	Rocca J R
Beak R A 2	Hygard H	Richardson M
Burns M	Habish E	S
Burkemshaw N	Heath F	Sparks A
Beatie M T	Hanson S	Speed Mrs
Blackburn M	J	Sherman A
Bushby K	Johnson A M D	Strand A
Bacon J	Johnson E	Shephard E B
Braby E	Jensen C L	Stringham H
Bain E	Jarvis C	Shill G
Brown E	Jufan M A	Snow J A
Berg E 2	Jaufsar P	Schultes M
Bacon Mrs	Johnson S	Sims M
Burrough Mrs	Jills S	Sanders M
C	Johnson Mrs	Scarborough P
Curtis C	K	Sayers R V
Chase C	Knight E	Showel M A
Conklin H	Kelsey C A	T
Cummings E	L	Tatersall A
Cameron J	Lewis P	Tracy G A
Clayton L	Leaker N	Taylor J M
Cooke L	Lang M 2	Thomas L
Cave N	Lindsey J G	Thompson L B
Carmell S J	Lindsay J R	Taylor M
Ckooklik Mrs	Luff G	V
Cook Mrs	Lewis A T	Vernon H
Croyle A J	M	Vaughn G
Curtis C	Millgate R	W
Cameron D	Mutyer M	Werner T A 6
Camp C	McDonald M	Woodmansee A
D	McLean N	Werner E T
Drascher M L	McMillan E J	Wallis F L
Duncan M	McBride A	Woodmansee
Douglas L	Morton M A	E A
DeHaven J L 3	Morgan M	Whitaker K
E	Morton M A	Walunealu L
Erikson A E	Madsen L 2	Winter M
Ellis D	Miller H C	Wesberg M
Eoop F	Mullhall A 2	Wallace M
Evans J	N	Winslow R
Elkington S	Nilssen B	Whitaker R
F	Newton A	Wooley S
Faneson H	Neder R	Ward S
Fuller E	O	Wilkinson S A
Francis K	Ostlund C	Weed F
Foster M	Olett G M	White S M
Fuller S	Oslude S	Y
Field S	P	Young J 2
G	Pegg Mrs	Young E J
Gerber A	Potter D	
Garden E M	Prisbrey E	

GENTLEMEN'S LIST.

A	Harzfeld E	Park D
Alexander &	Hyde E	Park F
Hymes	Homer H	Price G W
Adelard A	Henderson G A	Putman J H
Anderson C J	Hancock J C 2	Pearson J M
Armstrong C	Humphries J S	Powell J
Axton J	Hunter J	Parks W M
Acomb J	Hurst J	Pratt M
Anyler J	Hoffman J H	Pierson L H
Allard J	Hernsley J	Palmer P
Albion J	Hartman M	Pratt P P
Allen M M 2	Hardman L	Peskuler P
Adamson R	Hemmenway	Peart O
B	L 2	Paul W
Brown S J	Henchy P	Pierson W H
Bennett A O 3	Hart W	Palmer W
Barnicle J	Harris W	Pease L
Bund Mr	Holting W	Pitts W L
Backman A	Hyde W E	Palmer W F
Burt A	Harris T	Q
Bills A	Hyman T	Quilder J
Bird W	Hubbard S	R
Ball C M	Higham R H	Reed G
Brooks C F	Helling P	Rudy F H
Bromander F	I	Riley A V
Batton E	Isegreen J M	Richardson G
Browning F D	Irvine J	Russell H W
Braby G H	J	Reime J
Bartlett G W	James A W	Rboom J W
Boyd G W	Johnson B	Riggs S E
Bowen J M	Johnson C	Reed W H
Bench J L	Johnston F F	Reeves W
Burton J 2	Johnsey G	Reilly W
Bird J	Jensen J R	Richen W
Boyden J	Jefferson J A	Robinson W
Bancries R	Johnston J C	S
Bennion S	Jacobsen F E	Smith J B
Benjamin S	Jeffs W	" R
C	Jones J R	" F
Call A V	K	Stanley Mr
Carter E F	Kelly B	S & Co
Cropper G W 2	Keaton C	Sorrenson A
Cowley G H	King F	Springall A
Cavage H	Kendrick E	Symons R
Chugg G	Kelly G H	Schwabe H
Charter H I	Keel H D	Senior E
Cannell J	Kendal J	Stephens E L
Clark J	Kouniski S	Sawyer F O
Carlson J L	Kittredge W	Sparry E M
Croender J R	L	Sperry C
Cummings J 2	Leith A	Sans C
Cameron J	Lindsay S 2	Shoemaker D
Chandler J J	Lang A	W
Collins J R	Lenore M Co	Scowcroft J
Cly J J	Ludington E	Soudan J
Canaille J	Leeds B F	Siddaway R
Clements M	Linnell H	Sanigar J
Christenson N	Lawson J P	Scowcroft J
Casper M	Larsen J	Sellers J
Chadd M	Lee J M	Short J
Campbell C	Lundgreen P	Sheller J
Chun W	Laws R	Shelton L
Carlton W	Livingston R	Stiler M
Connell W J	Lawson R H	Short M B
D	Loury T A	Stephenson L
Daynes &	Lynch W	Stridbeck P A
Flater	Lewis W	Sainsbury R E
Danhausen	M	Slougn S
DeGraf H P	McGregor J B	Sanders S L
Dean E M 2	McIntyre T	Snider S H 2
De Shemining	McCoy H	Stevenson T D
G	McCrae H	Sorenson T
Davis J G	McCary W A	Stafford W H
Duncombe H	McCarty W	Sunderland W
Davis M H	McNeal C A	Snoll W
Davis W M	Martin D	Simpson W
Davis E W	Mitchner C E	Smith W
E	Martin A F	T
Ellsworth &	Murry C	Tullis J
Nargnott	Meyer C	Thomas Bros
Elleim J	Mackey F	Thomas J
Ensign J C	McClure G	Thayden I
Everill J	Maxwell H	Tibets J
F	Martin G	Thompson R
Finnan D R	Master H	Tester W
Furbish E B	Mathews J	Traner W
Floyd C F Lt 2	Meagre J	V
Fox G	Mackey J	Vandernamen
Fehland H	Moyle J	G
Finks J A	Majne J	W
Fillmore J L	Mun J	Whiteman A
Fickes J D	Mayers M M	Wilson A H
Fillmore J H	Morris R V	Wall A C
Fryer R G	Moses S & Co	Whipple & Hay
Fitt T	Miller R B	Wallace C B
G	Masters T G	Wilkie F W
Gutko F	Miller W H 2	Wheeler E
George H	Marshell W	Wix G R
Gampan J	N	Wilson I
Galligher J J 2	Newman J D	White J W
Gibson J B	Needham J D	Wilson J D
Goebel M	O	Watson J
Garbett W	Osell E	West J W
Gibson W S	Osgood L S 2	Whitehead J
Gray S W	Olsen P 2	Williams J
Grant R	Owens W	Williams P W
H	P	Williams S
Haslem &	Paullin B	Winter T
Edwarns	Peterson N	Wenner Z S K
Harris Prof Agt	Pendleton A J	Ward O C
Hansen C K	Phillips C	Y
Hall E	Perry D H	Young W G
Hall F	Pearce C	" O C

Persons inquiring for the above letters are requested to state when advertised.

JOHN T. LYNCH,
Postmaster.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One old sorrel MARE, white strip in face, left hind foot white, JJ on left thigh and left shoulder.

One red bull CALF.

The above described animals if not claimed within ten days will be sold on Saturday, Oct. 21st, 1882, at one o'clock p. m., at the District Estray Pound, Logan, Utah

O. O. CROCKETT,
District Poundkeeper.

Logan, Oct. 11th, 1882.