Continued from Page 233.

Piute County—Emanuel J. Bare, Bullion precinct; John Beenan, Deer Trail precinct; Chas. Morrill, Circle Valley precinct; Jas. G. Forshee, Milmot precinct; S. Nishwanger, Koosharem precinct; Hugh J. McClellan, Freemont precinct; Mathew M. Mansfield, Thurber precinct; Chancey H. Cook, Kane precinct; John Giles, Burgess precinct; Wm. Bacon, Graves precinct.

Rich County—Stephen V. Frazier, Woodruff precinct; James W. Fackrell, Randolph precinct; M. P. Nebeker, Laketown precinct; Joshua Eldredge, Meadowville precinct; Wm. Read, Garden City precinct.

Tooele County—Fred Snively, Deep Creek precinct; Thomas Williams, Grantsville precinct.

Uintah County—C. D. Brooks, Ashley precinct.

Wasatch County—Robert Lindsay and Wm. Aird, Heber precinct; Henry M. Alexander, Midway precinct; Jerome W. Kinney, Charleston; D. C. Wray, Wallsburgh.

Garfield County—Jas. F. Jobuson, Hillsdale precinct.

John Anderson was also appointed presiding judge for the election to be held in Richmond City, Cache County, on the second Monday in June next.

Protecting the Lechers.—Two of the three Federal Judges composing the Supreme Court of the Territory, today rendered a decision which, in effect, throws a shield around keepers and inmates of aud resorters to houses of ill-fame, and throws wide open the gates of vice upon the community. To the credit of Chief Justice Zane be it said that he dissented from the infamous ruling. The opinion was rendered by Associate Justice Jacob S. Boreman, and concurred in by Associate Justice Orlando W. Powers, and was on the proceedings for a writ of prohibition, asked for to restrain the justice of the peace from trying, on a charge of resorting to a house of ill-fame for purposes of lewdness, the now notorious lecher, Wm. H. Yearian. A demurrer was entered to the jurisdiction of the Supreme Court to issue the writ, but was overruled. The Opinion then goes on at some length, indulging in a sophistical argument to bolster up the position taken, and declares that the Territorial statutes giving justices of the peace jurisdiction in criminal cases where the punishment is not more than six months' imprisonment and less than $300 fine, are invalid, and therefore justices cannot proceed thereunder. Past events have shown that the District Courts do not prosecute that class of offenses to which Mr. Yearian's belongs, and the deprivation of justices from having that power will leave free from all prospect of punishment the lewd and vile of both sexes. And this act is committed by those who howl about immorality in Utah! Verily such belong to a generation of vipers.

Eden Items.—Our old friend, Jas. A. Thompson, sends us from Eden, Weber County, under date of 22d inst., the following items:

"We had a very enjoyable meeting here this afternoon, at which we were favored with the presence of the Weber Stake Presidency and Apostle John W. Taylor. The latter addressed the congregation, which was large, the school house being crowded. His subject was 'Good and Evil Influences and their Results,' in the course of which he gave some excellent and timely advice to the youth of both sexes, which I hope will prove a benefit to all who listened to his remarks.

"The seeding is not quite all done yet in this valley. It has been raining now for nearly two days, which will be a benefit to the grain that is sown, but will stop any further farming for a few days.

"Our Sunday School is in excellent condition, with a good attendance. Last Sunday week a jubilee was given, with a programme of 43 pieces, consisting of songs, recitations, quotations from the Bible on the first principles of the gospel, by the various classes, short addresses by the scholars, card exercises, etc. Too much praise cannot be awarded to the scholars for the manner in which the programme was carried out by them, which occupied both forenoon and afternoon. Elders Austin C. Brown and Nephi Pratt, Sunday School missionaries, were with us, and closed the day's proceedings with some good instructions to all present.

"Our dramatic company have given several performances recently, which proved a source of amusement to the people during the winter months; and although the members of the company are all new at the business, they acquitted themselves in the various pieces presented, remarkably well. They expect to give another performance on May Day, when they will present the three act drama of 'Home Again,' and the farce of 'Beautiful Forever.' The company recently played in Huntsville, and their performance was a success both financially and artistically. The health of people is good.

ADDRESSES WANTED.

MONROE, Sevier County,
Utah, April 21st, 1886.

Editor Deseret News:

Will you be kind enough to publish an enquiry for me in the NEWS concerning the present place of residence of the following named members of the Mormon Battalion;

Ruel Barrus, who was Second Lieutenant in Company A Mormon Volunteers, who re-enlisted at Los Angeles, California, July 20th, 1847; Daniel C. Davis, Captain; Isaac Harrison, Corporal; Oliver N. Harmon, Oliver G. Workman, Andrew J. Workman and Wm. Hickenlooper. I have made applications for invalid pension, for injuries sustained while in service in second enlistment and while stationed at San Luis Bey, and under command of Lieut. R. Barrus, and the other parties named were eye witness to the accident.

If the parties mentioned will be kind enough to write to me they will confer a great favor upon one of their old companions in arms.

My address is Jos. V. Williams, Monroe, Severe County, Utah.

Very respectfully,
JAMES V. WILLIAMS.

FROM MONDAY'S DAILY, APRIL 26

Varian Reappointed.—C. S. Varian has been reappointed Assistant United States District Attorney for Utah, at a salary of $2,500 per annum—$1,000 more than he was receiving at the time of his resignation in September last.

Battered.—About noon to-day an altercation took place at the Walker House, between a cook employed at the hotel and a young man named Wm. Brown. The baker used very provoking language, and was badly battered by Brown, who was arrested.

Arraigned.—Henry W. Naisbitt was arraigned this afternoon, in the Third District Court, and pleaded not guilty to three indictments charging him with unlawful cohabitation with his wives, Francis Hurst Naisbitt, Lizzie Irvine Naisbitt and Kate Hagel Naisbitt, during the years 1883, 1884 and 1885.

Payson Raided.—By special telegram from Payson, Utah County, we learn that this morning about 6 o'clock, Deputies Vandercook, Redfield, Smith and others made a raid on that place in search of violators of the Edmunds law, but accomplished nothing further than subpœnaing a few witnesses through the aid of James Wilson, of Payson, a whisky vendor.

Obsequies.—The funeral rites over the remains of Mrs. Jane Romney, wife of Brother George Romney, were held at the family residence, in the 20th Ward, yesterday afternoon, Elder Henry Pusey presiding. The rooms were filled with relatives and sympathizing friends of the family. The speakers were Elder T. B. Lewis, Bishop John Sharp and Elder John Nicholson.

Diphtheria.—A Springville correspondent writes to us that diphtheria has made its appearance at that place, and that four deaths have already occurred from it. When it first became known it was claimed to be only croup, but that idea has now vanished from the minds of the people. The yellow flag has only just been put in place, and though only one person is now suffering from the disease so far as known, it is feared that there will be other developments among those who have been exposed to the malady.

Caterpillars.—John Olsen, a young man of the 17th Ward, called at the NEWS office to-day with some limbs of an apple tree which were pretty well covered with tiny caterpillars, apparently just hatched out from the rings of eggs that encircled the twigs. He reports the embryo pest very abundant in that part of town. The small branches containing them might be easily cut off and burned just now, and the nuisance thus got rid of, but negligence at this season will result in loss of fruit, denuded trees and the offensive sight of the crawling vermin this year as in the past.

Theft.—Theodore Johnson, a resident of Snyderville, near Park City, is paying this city a visit and is now bewailing his over-confidence in the honesty of its inhabitants. He inadvertently left his wagon unprotected on East Temple Street about noon today, and during his absence had $20 in money and a watch abstracted from it. The money was not his own, but the property of a Mrs. Lyon. No clue has yet been obtained to the thief.

Moral.—It is generally safer to keep money and watches in one's pocket than in an unguarded wagon while in Salt Lake City.

The Bergen Case.—At the conclusion of the trial of Stanley Taylor this morning, in the Third District Court, the case of The United States vs. John Bergen was taken up. The same jury as in the Taylor case were retained in the box to try the defendant, against whom the grand jury had found four counts in one indictment, charging unlawful cohabitation with his wives.

Mr. Sheeks, for the defense, asked that the prosecution be required to elect upon which count they would proceed.

Mr. Dickson argued that section 1024 of the Revised Statutes of the United States authorized the prosecution to proceed upon all the counts in the indictment, and the Court ruled that this position was the proper one. The defense took exception to the decision.

The clerk then read the indictment to the jury, the time included in the four counts being as follows: May 1, 1883, to December 31, 1883; January 1, 1884, to December 31, 1884; January 1, 1885, to December 31, 1885; and January 1, 1886, to March 31, 1886.

John Bergen, the defendant, was called as a witness. He testified that the ladies named in the indictment were his wives; that during the period named in the first count they lived with him as his wives.

The defense objected to any evidence covering the second count. Objection overruled.

Defendant testified that during the periods named in the second, third and fourth counts, the relationship existed.

The court then charged the jury that they could find the defendant guilty upon one or more of the counts, or could acquit as the evidence showed.

The jury expressed a desire to retire to the jury room, and they were given in charge of a bailiff. After remaining out fifteen minutes they returned, by N. Trewick, a verdict of guilty as charged on each of the four counts.

Mr. Dickson asked that another indictment for unlawful cohabitation against the defendant be taken up, as an important witness in the case was confined in the penitentiary, being unable to obtain bonds. The case was accordingly called, and the following jurors took their places in the box:

W. J. Handley,	Niels Gillis,
P. M. Whitely,	Henry Saddler,
Henry Siegel,	Cornelius Hunt,
Edward Roche,	S. S. Maxwell,
Aaron Sullivan,	C. E. Brim,
D. C. Murphy,	W. E. Blenney.

Henry Sadler had a fixed opinion as to the guilt of the accused, and was excused.

L. C. Jeffries was called to fill the vacancy in the jury, and was sworn.

The indictment was then read charging the defendant with having committed the offense from March 21 to April 19, 1886.

Recess was then taken until 2 p.m.

At 2 o'clock this afternoon the trial of John Bergen, on the fifth charge of unlawful cohabitation, was commenced.

Anna A. Black was the first witness. She testified that the defendant was her husband, and she had lived in his house since the 21st of March; Maria Mattison had also lived in the same house, as did also Augusta Bergen; witness had known Matilda Lundstedt about two months; saw her at defendant's house with defendant; witness had not heard defendant say he was going to marry Matilda Lundstedt; had been before the grand jury; did not remember what she had testified to there; did not remember saying that Bergen told her he was going to marry Matilda Lundstedt; Bergen never said such a thing to her. This witness was excused for a time, to give the prosecution opportunity to get the grand jury notes.

Maria Mattison was called. She had been married to the defendant 11 years; had lived in defendant's house; defendant and Augusta Bergen also lived in the same house; had seen Matilda Lundstedt in Bergen's store; Bergen was there also; witness went to Logan about two weeks ago; Matilda Lundstedt and John Bergen also went; witness had been thinking of going for over a year; on the morning they went, Matilda Lundstedt joined witness and defendant at the latter's store, and all went to the station together; at Logan they went to the same house; Bergen had never spoken to witness of going to marry Matilda Lundstedt; they all went to the Temple, and remained a couple of hours; witness was with Matilda Lundstedt all the time, and saw no ceremony performed; they next went to the Temple the following Thursday; were there most of the day; witness was with Matilda Lundstedt all that day; the two women were baptized; no other ceremony was performed; they were also at the Temple on Wednesday; they received endowments for the dead; no other ceremony was performed; they were also at the Temple on Friday, performing the same labors; did not know who officiated there; saw no marriages performed for the dead; there were perhaps 100 persons in the room; John Bergen and Matilda Lundstedt were not married there; witness and Matilda occupied the same bed; the defendant occupied a separate bed; they all returned together to Salt Lake, and went to Bergen's house; Matilda left some time after 10 p.m., in company with defendant; defendant did not say he would not be back that night, but he did not come, as he was arrested; Bergen had not counseled witness to testify as she had done.

The trial was still in progress when we went to press.

STANLEY TAYLOR CONVICTED

OF VIOLATING THE EDMUNDS LAW—HE TESTIFIES AGAINST HIMSELF.

The hearing of criminal cases at the April term of the Third District Court, commenced this morning. District Attorney Dickson came into the court room on crutches — the result of an injured knee, from falling while trying to catch a railway train and striking the limb on a rail.

The first case called for trial was that of the United States vs. Stanley Taylor, against whom four indictments had been found, charging violations of the Edmunds law, by living with and acknowledging as his wives, Hannah Taylor and Mary Ann Taylor, from April 1, 1883, to December 31, 1883, January 1, 1884, to December 31, 1884, January 1, 1885, to December 31, 1885, and January 1, 1886, to February 1, 1886, respectively. A plea of not guilty was entered to each charge.

The following open *venire* jurors were called, of whom Judge Zane remarked that they were "all odd numbers:"

L. Bougard,	E. A. Whittaker,
Henry Carrigan;	N. Trewick,
Fred Anderson,	Geo. Chandler,
L. C. Jeffries,	W. E. Blenney,
D. C. Murphy,	E. A. Brim,
Aaron Sullivan,	S. S. Maxwell.

The defendant was then called as a witness and testified that from April 1, 1883, to Dec. 31, 1883, Hannah and Mary Ann Taylor, the ladies named in the indictment, were his wives, and had lived with him in that relation.

The jury, by N. Trewick, foreman, rendered a verdict of guilty, without leaving the box.

Sentence was fixed for Monday, May 10, and the other three charges were continued for the term, and the witnesses excused.

A MONSTROUS STEAL ATTEMPTED.

Judge Zane's Decision to Remove from Office Those Whom the People Elected.

The Revolutionary Move to Place all Territorial Officers in the Hands of the Rule-or-Ruin Clique.

Following is the full text of Judge Zane's ruling, delivered in the Third District Court this morning, declaring the acts of the Legislature making elective territorial officers, invalid, and ordering the present incumbents, Nephi W. Clayton, Auditor of Public Accounts, and James Jack, Territorial Treasurer, to vacate their offices:

This case of the People of the Territory of Utah, on the relation of Wm. H. Dickson, United States District Attorney for said Territory, plaintiff vs. Nephi W. Clayton, defendant.

This is a proceeding under Chapter 5, page 282, of the statutes of 1884. The first section of the statute describes the causes or the wrongs for which this chapter furnishes the remedy. Section 691 is as follows:

"An action may be brought in the name of the people of this Territory against any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this Territory, without authority of law. Such action shall be brought by the prosecuting attorney of the proper county, when the office or franchise relates to a county, precinct or city, and when such office or franchise relates to the Territory, by the United States district attorney; and it shall be the duty of the proper officer, upon proper showing, to bring such action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, held or exercised without authority of law."

This statute has changed the form of pleading with respect to rights and wrongs for which a writ of *quo warranto* was formerly the remedy; but the change is held by weight of authority as simply as to the form, not as to the substance. The position of the parties, and the rules of evidence, and the presumption of law, remain the same as before this statute went into force or into effect. The statute here in this Territory is the same, substantially, as those in New York, California and other States. In the case of The People, on the relation of Judson—Thatcher, in the 55 New York, page 525, the Court says, after discussing the remedy:

"The forms of procedure have been changed, but the position of the defendant, and the rules of evidence, and the presumptions of law and fact are the same as in the proceeding by writ or information, for which the remedy by action was substituted. The people are here the ultimate source of the right to hold a public office; and now, as heretofore, when the right of a person exercising an office is challenged in a direct proceeding by the Attorney-General, the defendant must establish his title, or judgment will be rendered against him. It results from these considerations that the defendant, in order to have judgment in his favor, was required to prove that he was elected to the office of mayor at the election held in April, 1872. The possession of the office was not in this action evidence of his right."

So that the position of the parties, and the rules of evidence, and the presumptions of law, remain the same as they were when the writ of *quo warranto* was enforced, or where it is now enforced. Section 713 of "High on Extraordinary Legal Remedies" is as follows:

"As regards the question of intrusion into or usurpation of the office, to test which an information is filed, it is regarded as sufficient to allege, generally, that the respondent is in possession of the office without lawful authority. And in case the pleadings are defective in this respect, the defect is one which should be taken advantage of by special demurrer."

SECTION 716—"When the proceedings are instituted for the purpose of testing the title to an office, the proper course for a respondent is either to disclaim or to justify. If he disclaims all right to the office, the people are at once entitled to judgment as of course. If, upon the other hand, the respondent seeks to justify, he must set out his title specially and distinctly, and it will not suffice that he alleges generally that he was duly elected or appointed to the office, but he must state specifically how he was appointed, and if appointed to fill a vacancy caused by removal of the former incumbent, the particulars of the dismissal as well as of the appointment must appear. The people are not bound to show anything, and the respondent must show on the face of his plea that he has a valid and sufficient title, and if he fails to exhibit sufficient authority for exercising the functions of the office, the people are entitled to judgment of ouster. Unless, therefore, the respondent disclaims all right to the office and denies that he has assumed to exercise its functions, he should allege such facts as, if true, invest him fully with the legal title; otherwise he is considered as a mere usurper."

From this authority—and it is a statement of the weight of authority—it appears that the burden of proof and of allegation as well, is upon the defendant in a proceeding of this character, to show that he has a legal right to the office—to show his title.

The respondent in this case has demurred to the complaint, and the question is: "Is this complaint sufficient as against him in view of the statute referred to and of the rules of pleading and of proof as stated in the authorities referred to?" The allegation is, so far as it relates to the respondent's right:

"The People of the Territory of Utah, by William H. Dickson, United States District Attorney for said Territory, complains of the said defendant, and alleges that heretofore, to wit: in the year A.D. 1879, the said defendant, Nephi W. Clayton, did usurp and intrude into the office of Auditor of Public Accounts, in and for the said Territory of Utah, and ever since that time he has, and does still, hold and exercise the functions of said office, without authority of law therefor."

This complaint, so far as it relates to the defendant, is substantially in the terms of the statute. It sets forth that in the year 1879 the defendant usurped and intruded into the office of Auditor of Public Accounts of the Territory of Utah; and further, it states that "since that time he has, and does still hold and exercise the functions of said office, without authority of law therefor." In many criminal proceedings it is held that the offense is sufficiently described if, with the additiou of dates and names and venue, the indictment follows as in the terms of the statute, where it is a statutory offense and the offense is described in the statute.

It is insisted that this is a statement of conclusions and not of facts, and the principal objection is to the concluding portion of the complaint, which sets up the wrong complained of. The complaint is: "hold and exercise the functions of said office, without authority of law therefor." It would have been more specific if the party had stated "without appointment," assuming the plaintiff, in view of the law, to be correct, or "without due appointment." But there is only one way, according to the view of the law which the plaintiff takes, if he is correct in it, by which the party could have lawfully come into the office, and that would be by nomination and confirmation by the Territorial Council, as the party came in, according to the allegation here, in the year 1879, and it is alleged that that was wrongful and that he wrongfully continues to hold still in the office by virtue of that wrongful usurpation.

In complaints of this character, when the burden is upon the defendant, both of allegation and of proof, to show his right, where his right to the office is challenged by the people, it is not necessary to show, to point out, with great particularity the acts which constitute the wrongful usurpation or the wrongful holding of the office. This, in the light of the California decisions, without referring to them, I am disposed to hold as sufficient, and I am disposed to hold that it is sufficient on principle in a case of this character. If the respondent holds the appointment it is something that he has in his possession, and it is not therefore necessary to state with any degree of particularity and describe that appointment, because, it being in his possession, it is sufficient to deny his legal right and to challenge his right in that way; and then it is his duty to justify and show his authority.

There are other allegations in this complaint, but they relate to the plaintiff Pratt. These, under the authorities, I am disposed to hold are not now in question.

The question therefore arises: "Is the respondent justified—do the facts stated in his answer show that he has a legal title to his office? His statements are as follows:

"Further answering the complaint of said plaintiff and for a separate answer thereto, defendant alleges that on the 1st day of August, 1880, he was a citizen of the United States, over the age of 21 years, and he was then and there and at all times since has been and now is eligible under the laws to hold office in Utah Territory.

"That an election by the people of Utah Territory was held on the second Monday in August, 1880; that at said time said defendant was the incumbent in said office, having been elected to said office theretofore. That on said last named date defendant was again elected by the people of said Territory to be Auditor of Public Accounts for the Territory of Utah."

And alleges further that afterwards, in September, 1880, the Governor of the Territory, under his hand and seal, issued to the defendant a commission as said auditor, which was also signed by the Secretary of said Territory.

These are the allegations, so far as it is necessary to state them. His right, therefore, depends upon the election