

AN APPEAL DENIED.

THE TERRITORIAL SUPREME COURT REFUSES TO ALLOW THE OFFICE CASES TO GO TO THE UNITED STATES SUPREME COURT.

In the application of Messrs. James Jack and Nephi W. Clayton, Territorial Treasurer and Auditor, for bonds on appeal to the United States Supreme Court to be fixed, the Territorial Court to-day rendered the following decision refusing the appeal:

IN THE SUPREME COURT, UTAH TERRITORY.

The People of the Territory of Utah, upon the relation of W. H. Dickson, United States District Attorney for said Territory,

vs.
Nephi W. Clayton,
and
The People ex rel. etc.,
vs.
James Jack.

OPINION OF THE COURT.

Power, J.—The defendants move this Court to allow them to appeal from its judgments to the Supreme Court of the United States. The motions are based upon an act of Congress entitled, "An Act regulating appeals from the Supreme Court of the District of Columbia and the Supreme Courts of the several Territories," found in the statutes of the United States for 1884 and 1885, page 443. It is the act of March 3d, 1885, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of the District of Columbia, or in the Supreme Court of any of the Territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars."

"SEC. 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copyright, or which is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute."

It is contended that the defendants are entitled to an appeal, under each of the foregoing sections. In order to better understand the question before us, let us consider what are the issues in these cases, or, in other words, what is the "matter in dispute."

The proceedings were actions in the nature of *quo warranto*, to determine the rights of the defendants respectively, to the offices of Auditor of Public Accounts and Treasurer of the Territory of Utah. The question litigated, so far as the defendants were interested, was their title to the offices named. That was the only "matter in dispute." It is a matter which cannot be measured by dollars and cents, and it is clear, upon the most cursory examination, that it does not come within the first section of the act.

Turning then to the second section, and it becomes equally clear that in these cases there was not involved the validity of any patent or copyright, and certainly there was not drawn in question the validity of any treaty. The question remaining is whether there was drawn in question the validity of any statute or of any authority exercised under the United States.

The defendants claimed to be Territorial officers. They based their title upon an election by the people of the Territory under and by virtue of a Territorial statute. The extent to which they were concerned in the cases was their right to hold office under a Territorial law. They were exercising no authority under the United States, but they claimed their title from another source. They had no interest, and had no right to be heard upon any other question. This court held that the Territorial law was void, so far as it provided for an election by the people or by any other mode, than that pointed out by the Organic Act and by Section 1857 of the Revised Statutes. No statute of the United States was drawn in question. No contention was made but what the Organic Act and Section 1857 of the Revised Statutes of the United States were valid. On the contrary, it was a statute of the Territory and an authority exercised under and by virtue of that statute which was drawn in question and was passed upon. The power or authority of the Legislature to legislate upon the particular subject matter was not questioned, for it has that authority. This court simply decided that the officers named could not be selected in the manner which the Legislature had pointed out.

In the case of the United States against Lorenzo Snow, this court had construed a statute of Congress, and the question came up in the Supreme Court of the United States whether that court had jurisdiction to hear and determine the case. We can do no better than to quote the language of that court. After reciting the statute of Congress, which we have now under consideration, the Supreme Court, speaking by Mr. Justice Blatchford, says:

"This Act is relied on by the plaintiff in error as covering the present case. The first section of it applies solely to judgments or decrees in suits at law or

in equity, measured by a pecuniary value. If these two sections apply to a criminal case wherein is drawn in question the validity of a 'statute of, or an authority exercised under, the United States,' without regard to whether there is or is not any sum or value in dispute, the question still remains for consideration, whether, in the present cases, the validity of a statute of the United States, or the validity of an authority exercised under the United States, is drawn in question.

"The peculiar language of section 2 is to be noted. In section 709 of the Revised Statutes, allowing a writ of error to review a final judgment or decree in any suit in the highest Court of a State, in which a decision in the suit could be had, the language is, 'where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity.' This language is taken from section 2 of the act of Feb. 5, 1867, (14 Stat., 396,) where it is reproduced verbatim from section 25 of the Judiciary Act of Sept. 24, 1789, (1 Stat. 85). In section 2 of the act under consideration the words 'and the decision is against their validity' are not found. In section 1911 of the Revised Statutes, in regard to Washington Territory, the language adopted substantially from the act of March 2d, 1853, (16 Stat., 175,) is 'in all cases where the Constitution of the United States, or a treaty thereof, or, Acts of Congress, are brought in question,' and is not limited to the case of a decision against the validity of the Act of Congress is brought in question, but only where the validity of a statute of the United States is drawn in question, or where the validity of an authority exercised under the United States is drawn in question; but this is not limited by the requirements that the decision shall have been against such validity.

"In the present cases, the validity of a statute of the United States is not drawn in question. No such question is presented by the bills of exceptions, or the requests for instructions, or the exceptions to the charges, or anywhere else in the records. Nor is the validity of an authority exercised under the United States drawn in question. The plaintiff in error contends that the construction of the Act of 1882 is drawn in question, and also the authority exercised under the United States by which he was tried and convicted; that the authority of the United States is invoked to deprive him of his liberty, in a Court established by Congress, and acting solely by Federal power; and that the question is, whether the authority exercised by the Court under the Act of 1882 is a valid authority, and within the scope of that Act, because the contention is that the Court misconstrued the statute and acted beyond the authority which it conferred. The authority exercised by the Court in the trial and conviction of the plaintiff in error is not such an 'authority' as is intended by the Act. The validity of the existence of the Court and its jurisdiction over the crime named in the indictments, and over the person of the defendant, are not drawn in question. All that is drawn in question is whether there is or is not an error in the administration of the statute. The contention of the plaintiff in error would allow a writ of error from this Court in every criminal case in a Territory where the prosecution is based on a statute of the United States; and, indeed, might go still farther, for the authority of every court sitting in a Territory is founded on a statute of the United States. From the fact that a given criminal case involves the construction of a statute of the United States, it does not follow that the validity of 'an authority exercised under the United States' is drawn in question."

"The foregoing is clearly in line with the views we have expressed, and is an authoritative exposition of the law. It is in conflict with the claims set up by the defendants, and indicates that they have no right to appeal. The contention made that because the court below held that the appointees of the Governor were entitled to the offices in dispute, therefore 'an authority exercised under the United States' is drawn in dispute, is of no moment. In deciding these cases we said, in substance, that the defendants are not interested in the action of the Governor, but only in the question as to their own right to hold office. They can be heard only so far as the judgment of the lower court affected such right. The action of the Governor cannot be properly criticized by the defendants. While this Court expressed its opinion, which it now reaffirms, that the Governor was authorized to do what he did do, we were not required to pass upon that question in disposing of the appeal of the defendants.

We are clearly of the opinion that the defendants have no right to appeal to the Supreme Court of the United States, and the motions for appeals are denied.

ZANE, C. J., concurs.
BOREMAN, A. J., concurs.

LOCAL NEWS.

FROM THURSDAY'S DAILY, JUNE 24

Killed.—A message received from Stockton, Tooele County, states that to-day a miner was accidentally killed. He fell while at work, striking on a beam and breaking his neck.

Information Desired.—If John Ritson is living it would be to his advantage to send his address to the ad-

vertiser. The said John Ritson was formerly of Lancashire, England, and came to America as a Latter-day Saint about the year 1840. If alive he will now be about 73 years of age. If dead, any person giving particulars would greatly oblige.

BRIDGET ROGERSON BUTT,
Parowan, Utah.

An Important Operation.—A very delicate and skillful operation was performed at the Deseret Hospital to-day, by Dr. Romanus B. Pratt, assisted by Dr. Harrison. The subject was Thos. Archibald, of Malad, who, about 12 years ago, received an injury to one of his eyes. To prevent the other being destroyed, by sympathetic effect, enucleation of the one that had been wounded had to be resorted to. The operating surgeon did the work with exquisite skill, and the patient is doing as well as could be expected.

Reducing the Rate for Telegrams.—On July 1st the Western Union Telegraph Company will make further extensive reductions in its rates on messages, from Salt Lake to the following points, in which the public generally will be interested:

To Arizona, from \$1 to 75cts.
To Idaho, from \$1 to 60cts.
To Kansas, from \$1 to 75cts.
To Montana, from \$1 to 75cts.
To Nebraska, from \$1 to 75cts.
To New Mexico, from \$1 to 75cts.
To Nevada, from 75cts. to 60cts.
To Wyoming, from 75cts. to 60cts.
To points in these States and Territories having at present lower than the above reduced rates, there will be no change. To many Western Union offices in California on and near the line of the Central Pacific Railway, the rates will be cut from \$1.00 to 75 cents. The same reduction will be made to quite a number of points in Oregon and Washington Territories, and to the latter Territory and British Columbia offices, night messages will be accepted for 75 cents.

The night rates to all of the above mentioned States and Territories will be correspondingly reduced.

Election Judges.—The following judges of election have been appointed by the Utah Commission, to act at the forthcoming elections:

CACHE COUNTY.

Newton precinct—Peter Christensen, John H. Harner, Jr., George J. E. Larson.
Lewiston precinct—Rasmus Anderson, Geo. W. Wheeler, Edward A. Bowles.
Mendon precinct—Frederick Larson, And. Bigler, Joseph Baker.
Millville precinct—L. H. Newman, Isaac Scott, Joseph Hovey.
Clarkston precinct—Hyrum Peterson, Adam Fife, Russell Homer.
Peterborough precinct—Paul M. Poulson, Peter Peterson, Elias Davis.
Providence precinct—Mark Fletcher, Chas. Rammel, Jr., Robert H. Fife.
Paradise precinct—Charlton M. Goldsberry, P. J. Rock, Robert Pearce.
Hyrum precinct—Andrew Albertson, D. O. Bevans, Eli Bradley.
Trenton precinct—William D. Goodwin, Andrew Simmons, Brigham Benson.
Benson precinct—John E. Nelson, Henry Griffiths, James Clark.
Hyde Park precinct—Aaron Dewitt, Martin Woolf, Stephen Thurston.
Wellsville precinct—Samuel W. Hall, Peter M. Maughan, Evan Owens.
Richmond precinct—John Anderson, John O. Gooch, Samuel H. Holson.
Smithfield precinct—John Savage, James Hatfield, James Kirkleid.
Coveville precinct—Hyrum Bair, Henry Allen, Henry Hendricks.
Logan precinct—Thomas Rowland, Wm. Goodwin, Sen., W. W. Maughan.

SUMMIT COUNTY.

Coalville precinct—Jos. S. Salmon, John Spriggs, Thos. L. Allen.
Echo precinct—James E. Bromley, Samuel M. Yeoman, Richard Wickel, Sen.
Hennefer precinct—John Anderton, Meredith Dawson, Geo. Roberts.
Hoytsville precinct—George Daniels, Alma Stonebraker, Alonzo Winters.
Kamas precinct—Niels W. Peterson, Peter H. Peterson, John Pack.
Park City precinct, 1st poll, First Ward—D. O. Kingsbury, L. A. Snyder, Chas. E. Pace.
Poll 2, 2nd ward—Nathan B. White, Frank E. James, Jno. W. A. Timms.
Poll 3, 3d ward—Jos. E. Foster, John Dadds, Geo. Goddard.
Poll 4, Ontario Gulch—Daniel Dader, Geo. O. Turnbull, John A. Compton.
Poll 5, Daly Mine—Henry Shields, James E. Caine, Wm. Timms.
Poll 6, Crescent Mine—Walter A. Cook, Geo. B. Davis, Geo. M. Pace.
Farley's Park precinct—Frank Snyder, Gebro Waltney, Wm. Archibald.
Peoa precinct—Algeroy Ramsdell, Chas. P. Robbins, Oscar F. Lyons.
Rockport precinct—Joshua Crosse, James Vernon, John Mallin.
Wanship precinct—Wm. Reynolds, Geo. W. Moore, Geo. W. Young.
Woodland precinct—John Vance, John Smith, Abner E. Keeler.

FROM FRIDAY'S DAILY, JUNE 25

Election.—On the first Monday in August a municipal election will be held in Hyrum City, Cache County, for mayor, six councilors, recorder, treasurer, marshal, assessor and collector and two justices of the peace.

Death from Diphtheria.—Yesterday afternoon, George Samuel Morgan, aged 21 years, and son of John and Ann Morgan, of Mill Creek, died of diphtheria. This is the second death

within two weeks in Brother Morgan's family. The funeral of the young man, who was highly respected, took place to-day.

An Old Subscriber.—We have an old subscriber in Dayton, Ohio, Winthrop Graves, who has taken the DESERET NEWS for many years and says he intends to read it as long as he lives. He is now nearly 82 years of age. He was in Nauvoo in 1843 and heard the Prophet Joseph preach but circumstances have detained him in Ohio, since the expulsion from Illinois. We wish our old friend continued life and ability to read and appreciate the "NEWS."

A Lost Boy.—On the 26th of last April a 13-year-old boy named Harry Nichols "played hokey" and went to the Odd Fellow's picnic at Anaconda, Montana. Since that date the boy's parents have neither seen nor heard of him, and a systematic search of the city has failed to discover him. The boy is 13 years of age, has brown hair and eyes, and when he left home was dressed in a suit of dark-colored clothing, straw hat, navy-blue shirt and laced shoes. Any person knowing anything of the boy's whereabouts will confer a favor on the uneasy parents by communicating with Sheriff Sullivan.—Butte Miner.

Appointed.—The following Judges of Election were appointed by the Utah Commission to-day, for the municipal election which will occur on August 2, 1886, in the following named cities:

Hyrum City—Andrew Albertson, D. O. Bevans, Eli Bradley.
Moroni City—Wm. Daniels, P. P. Draper, John Bailey, Jr.
Spring City—James Commander, Daniel Beckstrom, C. Clawson.
Morgan City—A. D. Shurtliff, C. A. Smith, S. Francis.
Mendon City—Frederick Larson, Andrew Bigler, Joseph Baker.
Willard—Thomas W. Brewerton, Edward Morgan, Wm. Lowe.
Richfield City—Mads Christensen, August Nielson, Peter Jensen.
Cedar City—Evans Williams, John Chatterly, Richard Bryant.
Parowan City—G. S. Halterman, E. L. Clark, Wm. Davenport.
Fairview City—Wm. F. Young, R. C. Davidson, R. W. Westwood.
Washington City—Joseph Crawford, Melville M. Harmon, John P. Childester.
Corinne City—J. K. Fowler, James Coll, W. P. Church.
Bear River City—M. C. Mortenson, Jas. Appson, H. L. Anderson.

Court at Ogden.—The First District Court met at Ogden yesterday, and James W. Ferrin and James M. Ferrin were arraigned on indictments charging them with unlawfully and wilfully breaking, obstructing and destroying a certain irrigating ditch situated in Eden. The complaining witness is James M. Chambers. The plea of not guilty was entered.

The case of the United States vs. Wm. H. Pidcock, against whom there was a five-count indictment charging the defendant with cohabiting with more than one wife, was called up. Mr. Pidcock's attorney, Hon. P. H. Emerson, stated to the court that the defendant wished to withdraw his plea of not guilty to the first three counts in the indictment. This was permitted by the court and Mr. Pidcock entered a plea of guilty to those counts.

The prosecution asked that the fourth count in the indictment be continued for the term. Granted.

As to the fifth count, the prosecution asked that it be dismissed and the matter submitted to the grand jury. After some discussion an order to that effect was made.

The Court fixed Wednesday next, June 30th, as the date for passing sentence upon Mr. Pidcock.

Several indictments were reported by the grand jury, and the court adjourned.

Appointments.—Judges of election appointed to-day by the Utah Commission for the general election:

IRON COUNTY.

Paragonah Precinct—John S. Barton, D. A. Lamoreaux, R. A. Robinson.
Parowan precinct—G. S. Halterman, E. L. Clark, Wm. Davenport.
Summit precinct—John White, James H. Dalley, Joseph H. Dalley.
Cedar precinct—Evans Williams, John Chatterly, Richard Bryant.
Kanarras precinct—S. J. Pollock, Geo. Williams, W. P. Wilson.

BEAVER COUNTY.

Beaver Precinct—John Barracough, Wm. P. Smith, Henry Emmerson.
Greenville Precinct—John Barton, Dan Barton, Jos. S. Morris.
Adamsville Precinct—Joseph H. Joseph, David D. Reese, Thomas Gunn.

Minersville Precinct—Louis Lessing, Peter Guio, W. L. H. Dotson.
Minersville precinct, Poll No. 2, discontinued, as there are only about six voters in that district.

Star Precinct, Poll No. 1—P. S. Martin, A. W. Mowrie, Chas. V. Clinton.
Star precinct, Poll No. 2—W. H. Burdison, Stephen Maher, George Roberts.
Grampson precinct—Peter Lochrie, W. H. King, L. Holbrook.

The first named of the three is the presiding judge in every case.

FROM SATURDAY'S DAILY, JUNE 26

Lorin Farr Arrested.—Last evening Hon. Lorin Farr, of Ogden, was arrested by Deputy Marshal Steele, on a charge of unlawful cohabitation. The indictment contains five counts, two for 1883, and one each for 1884, 1885, and

1886, alleging that the defendant lived with his wives contrary to the provisions of the Edmunds law. He was arraigned in the First District Court to-day, and took the statutory time to plead. He was released on \$3,000 bail.

Court Notes.—The Third District Court held a short session this morning. R. R. Rogers, who was indicted for grand larceny for having stolen a horse from W. H. Atwood, was arraigned and pleaded guilty to the charge. In reply to the Court, he stated that he was out of work and money, and being too worn out to travel on foot, had taken the animal, which action he repented of. He was sentenced to two years in the penitentiary.

The suit of James M. Thomas vs. the Salt Lake and Jordan Canal Company, for \$2,500 damages claimed to have been sustained by the plaintiff through his property being submerged by water from the surplus canal, was dismissed, on the motion of plaintiff, the matter having been settled between the parties.

In the suit of the D. & R. G. W. Ry. Co. vs. the D. & R. G. Ry. Co., the court issued an order allowing the Receiver to erect an eating house at Green River. For this purpose the amount received for insurance on the building recently burned at that place, \$4,558, and \$6,000, or so much thereof as may be necessary, may be used.

The court then adjourned to Friday, July 2d.

An Awful Outrage.—About 10 o'clock last evening Miss A. Lefler, of the First Ward, asserts that she was the victim of a terrible outrage by a young man known as Abe Benedict, a resident of the Ninth Ward. Miss Lefler is employed as a laundress at the Walker house, and last evening started out to visit her sister's home. She was accompanied by another young lady, and the two called at a sodawater fountain. While they were drinking a glass of sodawater, a young man named Smith and Benedict entered the store together. Smith, who also resides in the Ninth Ward, spoke to the ladies, with whom he had previously become acquainted by attending parties in the First Ward, where a young girl with whom he keeps company lives. As he can be ascertained from Miss Lefler and her companion, the account of the affair is as follows: Smith, after talking a few moments, introduced Benedict to the girls, and in a short time all four left the store. The girls went toward their destination, and had not gone far when they were overtaken by the two young fellows who asked if they might walk with them. Believing Smith to be respectable and not thinking he would associate with any one who was not, they consented. Benedict accompanied Miss Lefler, and when they reached her sister's he asked her to walk down the block. She at first demurred, but finally consented. Her companion and Smith, however, did not proceed further, the former going into the house for which she had started. When the first couple had gone a short distance Miss Lefler desired to turn back, but Benedict half compelled her to proceed two or three blocks further, when he asked her to go on to Liberty Park. They were then in the Second Ward, and at this proposition she flatly refused to proceed. Unfortunately for her, the place she had arrived at when she came to this conclusion, was some distance from houses in either direction. Benedict seized her roughly, and, with an oath, declared that she would go. She resisted, when he threw her to the ground, declaring that if she made any outcry or refused to submit to his brutish purpose, he should kill her. A sharp struggle ensued, and the screams of the girl were heard three blocks away. She succeeded in getting to her feet again, and begged to be released. Her dastardly assailant, however, succeeded in accomplishing his fiendish purpose, and when he released his hold the girl ran to a house near by.

The young woman reached the house referred to in a state of great excitement. The bruises she received in the struggle were plainly visible, and her clothing was badly torn. This morning her father signed a complaint against Benedict in the justice's court, and this afternoon he was arrested. In default of \$5,000 bail he was placed in jail.

To avoid any possible misunderstanding in that regard, it is proper to state that we are informed that the young fellow alleged to have committed the assault is not in any way related to Dr. Benedict.

FROM MONDAY'S DAILY, JUNE 28

The Next Company.—A private telegram from the immigration agent at New York states that the S. S. Nevada sailed from Liverpool on Saturday with a company of 426 Saints on board.

Utah's Cadet.—John Wm. Snell, Jr., who a few months since was the successful candidate for the cadetship at West Point, has passed the critical examination at the latter place in a most creditable manner. Of the applicants on this occasion forty were unsuccessful.

The Lake Park Company.—A certificate of incorporation was issued to-day by Secretary Thomas to the "Lake Park Resort Company," organized under the laws of the Territory, with a capital stock of \$100,000, divided into 10,000 shares. The principal office of the company is at Salt Lake City, and the incorporators are Wm.