

Chief Justice McKean's Charge to the Grand Jury.

TERRITORY OF UTAH, } October
Third District Court, } Term,
Salt Lake City, } 1874.

JUDICIAL COGNIZANCE.

GENTLEMEN OF THE GRAND JURY: The Supreme Court of California has said: "Courts are bound to take notice of the political and social condition of the country which they judicially rule." And the illustrious juriconsult, Baron de Montesquieu, says, in his *Spirit of Laws*, "I shall first examine the relation which laws have to the nature and principle of each government; and as this principle has strong influence on laws, I shall make it my business to understand it thoroughly; and if I can but once establish it, the laws will soon appear to flow from thence as from their source."

Bearing these important principles in mind, it is incumbent upon you, gentlemen, and upon me, to remember where we are; to inquire what are the evils which confront us, and what are our duties touching them.

ABSOLUTE VETO.

In passing the act to organize this Territory, Congress took the precaution to invest the Governor with the power of an absolute veto of any law that might be passed by the Legislative Assembly. President Fillmore then, by and with the advice and consent of the Senate, appointed Brigham Young to be Governor of the Territory; and that Governor continued in that office during the administration of President Pierce.

PRIMARY DISPOSAL OF THE SOIL.

Congress also provided, that "no law shall be passed interfering with the primary disposal of the soil." But very soon thereafter the Legislative Assembly assumed to dispose of vast tracts of the public lands, of many streams of water, though artificial irrigation is essential to nearly all agricultural lands, and of vast forests of timber, though such forests are far from numerous. I will quote a few of these grants in the language of these Territorial legislators:

"The Islands in Great Salt Lake, known as Stansbury's Island and Antelope Island, * * * shall be under the exclusive control of President Brigham Young."

"Be it ordained, etc., that Ezra T. Benson is hereby granted the exclusive privilege of controlling the waters in Tooele Valley, Tooele County, known as the Twin Springs, also the waters that issue from a spring called the Rock Spring, in said Valley and county, for mills and irrigating purposes."

"Be it ordained, etc., that Brigham Young have the sole control of City Creek Canyon, and that he pay into the public treasury the sum of five hundred dollars therefor."

"Be it ordained, etc.; that the exclusive control of the timber in the canyons on the east side of the range of mountains west of Jordan, in Great Salt Lake county, is hereby granted to George A. Smith, who is hereby authorized to control the timber in said canyons, to work the roads into them, and to direct when, where, and by whom timber may be taken out therefrom." "No person shall be allowed to cut timber in any place in these canyons, without permission from the proprietor, who is hereby authorized to give directions accordingly."

"Be it enacted, etc., that the privilege is hereby granted unto President Brigham Young to take the waters from the channel of Mill Creek, immediately below Neff's Mill, and convey the same to the channel of Big Canyon Creek."

"Be it enacted, etc., that all the rights and privileges, as contemplated in 'An Act granting the control of waters from Mill Creek, in Great Salt Lake county, unto Willard Richards,' approved Feb. 3, 1852, be and are hereby granted unto Brigham Young, sen., and Franklin D. Richards."

"Be it enacted, etc., that any person who has inclosed, or may hereafter inclose, a portion or portions of unclaimed government land, * * * is hereby declared to be the lawful owner of the claim to the possession of such inclosed land, and the lawful owner of the improvements thereon and thereunto appertaining; and

he shall be so deemed and held in all legal proceedings, and in all rights and doings pertaining or relating to the aforesaid property."

"The owner of any property specified in the foregoing section, is hereby authorized, in order to recover possession thereof, to request, without process from any court or officer thereof, any constable, sheriff, or any deputy of either of said officers, to proceed forthwith to remove any person and his effects, who has unlawful or forcible possession of said property; * * * and the aforesaid constable, or sheriff, or a deputy of either, is hereby required and empowered to take at least two persons with him, and to at once proceed and use such course and resources as shall be requisite to remove the aforesaid person, and his effects, in unlawful or forcible possession, * * * and place the owner in full and peaceable possession of his property. Any sheriff or other officer, refusing to discharge the duties as required in this section, shall, on conviction thereof, be fined not exceeding one hundred dollars."

INTER-SQUATTING, ETC.

Many other acts "interfering with the primary disposal of the soil," might be cited. Let these suffice. Some of these, and other similar acts, were first enacted by the so-called Legislature of the so-called State of Deseret, and were afterwards sought to be ratified by the Legislative Assembly of the Territory. As one of the unlawful consequences of these void enactments, the buildings of many bona fide settlers have been torn down, such settlers in some instances murdered, in others thrown into the river Jordan or cruelly maltreated. Perjury, and subornation of perjury have frequently been committed to obtain patents of lands from the general government.

MUNICIPAL LIMITS.

Not content with these acts "interfering with the primary disposal of the soil," the Legislative Assembly has included vast tracts of land within the limits of city corporations, many of them containing small populations. To such an extent has this policy been carried, that a large proportion of the agricultural lands susceptible of irrigation at reasonable expense, have been included within the limits of cities whose councils enact ordinances over which the Governor's veto would be powerless.

THE LEGISLATURE ARRAIGNED—LEGISLATIVE RESOLUTIONS.

The Legislative Assembly has assumed to enact that "resolutions are equally valid with acts." The significance of this will be apparent when it is remembered, that acts require the Governor's approval while resolutions do not. No longer ago than last winter, an appropriation bill vetoed by the Governor, was passed by the Legislative Assembly as a resolution—thus seeking to impose upon the people many tens of thousands of dollars in taxes.

The natural, inevitable tendency of such legislation as I have called your attention to, is to give a few men an unlawful control over the lands, streams, and timber of the general government, and to discourage all agricultural immigration save in the interest of those few men.

PROBATE COURTS AND TERRITORIAL OFFICERS.

The Legislative Assembly assumed to confer upon the Probate Courts jurisdiction, civil and criminal, at law and in equity, in all cases arising under the laws of the Territory. It also created the offices of Territorial Attorney General and Territorial Marshal; and the incumbents of those offices, as well as the Probate Judges, have been, almost without exception, open violators of the laws of the land.

PROPERTY OF DECEDENTS.

The Legislative Assembly has enacted "that the Probate Judge in each county is empowered and required to take possession of all property left by any deceased or abscondent person, when there is no legal claimant known, or sufficiently near to see to it in season; and shall forthwith appraise and make two lists of said property, and keep one on file, and furnish one to the Treasurer of the Perpetual Emigration Fund."

"At the earliest practicable date,

the Probate Judge shall place said property, or the avails thereof, in the possession of said Fund; the value thereof to remain there until proven away by a legal claimant, when said Judge shall give an order therefor on the Treasurer of the Fund."

NON-CITATION OF PRECEDENTS—DOCTORS AND PRACTICE.

These legislators actually enacted that "no report, decision or doings of any Court shall be read, argued, cited or adopted as precedent in any trial;" and also that "no person or persons employing counsel, in any of the courts of this Territory, shall be compelled by any process of law to pay the counsel so employed for any services rendered as counsel, before or after, or during the process of trial in the case." And they further enacted, that "if any doctor, physician, apothecary, or any other person, shall give * * * any deadly poison, whether animal, mineral or vegetable, such as quicksilver, arsenic, antimony, or any mercurial, arsenical or antimonial preparation therefrom, or cicuta, deadly nightshade, henbane, opium, or any diversified preparations, such as chloroform, ether, exhilarating gas, calculated in their nature to destroy sensibility, from any other poisonous minerals or vegetables, to any citizen of the Territory of Utah, whether sick or well, old or young, man, woman or child, under pretence of curing disease, or from any other real or pretended cause, influence, argument, or from any design or purpose whatsoever, without first explaining fully, definitely, critically, simply and unequivocally, to the patient and surrounding friends and relations, such as father, mother, husband, wife, children, guardian, or others, as the case may be, and in plain, simple English language, the specific nature, operation and design of said poison or poisonous preparation about to be, or intended to be given, and procuring the unequivocal approval, approbation and consent of the patient, if of mature years and of sound mind, and of the parents, guardians or their friends, to the giving, administering or communicating said poison so intended, said doctor, physician, apothecary, person or persons so administering said poison, without the full and free assent of said patient and friends, shall be adjudged guilty of a high misdemeanor, and be punishable in any sum not less than one thousand dollars, and be imprisoned or confined to hard labor for any time not less than one year; and if the death of the patient or person so receiving the poison, as above specified, shall follow the taking of the same, without being made acquainted with the nature thereof, then the doctor, physician, apothecary, person or persons so giving or causing to be given said poison, shall be adjudged guilty of manslaughter or murder, as the case may be, by any Court having jurisdiction, and be punished according to law for such crimes."

WHAT SHALL BE SAID?—LANGUAGE FAILS.

Of such legislation what shall be said? Legislation to exclude from Utah the authority of Coke, Blackstone, Mansfield, Kent, Story and Marshall; to defraud the lawyer of his just compensation—the lawyer, who in all ages has been found amongst the foremost champions of liberty, the foremost foes of tyranny; and to send to the prison or the gallows the physician who, before prescribing for his possibly dying patient, fails to stop and deliver a lecture on materia medica to the bystanders. Language fails properly to characterize such legislation.

THE CONSTITUTION AND RELIGION.

The Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." But the legislators of Utah have passed "An ordinance incorporating the Church of Jesus Christ of Latter-day Saints," establishing it as the State Church; giving to it most extraordinary and formidable powers, and, in effect, prohibiting the free exercise of religion on the part of seceders and dissenters. I will quote one section of this remarkable ordinance:

"Sec. 3. And be it further ordained that as said Church holds the constitutional and original right, in common with all civil and religious communities, to worship God ac-

cording to the dictates of conscience, to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ, for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all; it is also declared that said Church does and shall possess and enjoy continually the power and authority, in and of itself, to originate, make, pass and establish rules, regulations, ordinances, laws, customs and criterions, for the good order, safety, government, convenience, comfort and control of said Church, and for the punishment or forgiveness of all offences relative to fellowship, according to Church covenants; that the pursuit of bliss and the enjoyment of life in every capacity of public association and domestic happiness, temporal expansion or spiritual increase upon the earth may not legally be questioned: Provided, however, that each and every act or practice so established or adopted for law or custom, shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker; inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality, and are not inconsistent with or repugnant to the Constitution of the United States, or of this State, and are founded in the revelations of the Lord."

ESTABLISHED CHURCH, DOCTRINES, ETC.

This enactment was first passed by the so-called Legislature of the so-called State of Deseret, after Congress had passed the act to organize the Territory, and was subsequently sought to be ratified by the Legislative Assembly. The "established church" here has ever regarded it as valid and binding. What are the covert meanings of this unprecedented enactment? I will take time to unfold one only of the many doctrines wrapped up in its verbiage. Let the makers of the law be its commentators. I quote from the "Journal of Discourses," published by authority of this church, and from the "Deseret News," the church official organ. Brigham Young, in public discourses, said: "The time is coming when justice will be laid to the line and righteousness to the plummet; when we shall take the old broad sword, and ask, 'Are you for God?' and if you are not heartily on the Lord's side, you will be hewn down. * * * There are sins which men commit for which they cannot receive forgiveness in this world or in that which is to come; and if they had their eyes opened to see their true condition, they would be perfectly willing to have their blood spilt upon the ground, that the smoke thereof might ascend to Heaven as an offering for their sins, and the smoking incense would atone for their sins; whereas, if such is not the case, they will stick to them and remain with them in the spirit world. I know, when you hear my brethren telling about cutting people off from the earth, that you consider it is strong doctrine; but it is to save them, not to destroy them." * * * "And furthermore. I know that there are transgressors who, if they knew themselves, and the only condition upon which they can obtain forgiveness, would beg of their brethren to shed their blood, that the smoke thereof might ascend to God as an offering to appease the wrath that is kindled against them, and that the law might have its course. I will say, further, I have had men come to me an offer their lives to atone for their sins." * * * "There are sins that can be atoned for by and offering upon an altar, as in ancient days; and there are sins that the blood of a lamb, or a calf, or of turtle doves cannot remit, but they must be atoned for by the blood of the man." * * * "I could refer you to plenty of instances where men have been righteously slain in order to atone for their sins. I have seen scores and hundreds of people for whom there would have been a chance, (in the last resurrection there will be,) if their lives had been taken and their blood spilled on the ground." * * * "I have known a great many men who have left this Church for whom there is no chance whatever for exaltation, but if their blood had been spilled it would have been better for them. "The wickedness and ignorance of nations forbid this principle

being in full force, but the time will come when the law of God will be in full force. This is loving our neighbor as ourselves; if he needs help, help him; if he wants salvation, and it is necessary to spill his blood on the earth in order that he may be saved, spill it."

WILL YOU LIVE YOUR RELIGION?

"Now, brethren and sisters, will you live your religion? How many hundreds of times have I asked that question? Will the Latter-day Saints live their religion?"

MOUNTAIN MEADOWS AND MORRISITES.

I might quote many similar utterances from the leaders of the people. Let these suffice. It is well to bear to mind that the legislation referred to was approved, and the sentiments quoted were uttered while Brigham Young was Governor of Utah. And I charge you that then and since, to say nothing of the Mountain Meadow Massacre in my brother Boreman's district, or of the Morrisite massacre in this district, hundreds of murders have been perpetrated in pursuance of this legislation and this doctrine.

TREASON, ETC.

This Legislative Assembly also enacted "That whoever is guilty of treason, by levying war against the Territory, or by adhering to its enemies, giving them aid and comfort, shall be punished with death."

"If any person have knowledge of the commission of the crime of treason against the Territory, and conceal the same, and not, as soon as may be, disclose such offense, * * * he is guilty of misprision of treason, and shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding ten years, nor less than one year."

BUCHANAN'S ARMY.

Some years after this law was passed, the Government of the United States sent an army to Utah. As that army approached the Territory, the following proclamation was issued:

"I, Brigham Young, Governor and Superintendent of Indian Affairs for the Territory of Utah, in the name of the people of the United States in the Territory of Utah.

"1st. Forbid all armed forces of every description from coming into this Territory under any pretext whatever.

"2d. That all the forces in the said Territory hold themselves in readiness to march at a moment's notice to repel any and all such invasions.

"3d. Martial law is hereby declared to exist in this Territory from and after the publication of this proclamation, and no person shall be allowed to pass or repass into or through or from the Territory, without a permit from the proper officer.

"Given under my hand and seal at Great Salt Lake City, Territory of Utah, this 15th day of September, A. D., 1857, and of the Independence of the United States of America, the 82nd.

("Signed)

"BRIGHAM YOUNG."

FEDERAL OFFICERS.

So recently as four years ago this present month, I listened, in the Great Tabernacle here, to one of the conspicuous leaders of the people, a man who has had large influence in shaping legislation in Utah, and who then said, in the presence of more than ten thousand people:

"There is not in the Federal Constitution the dotting of an 'i,' nor the crossing of a 't,' giving any Federal official any right to be in this Territory. Congress had no right to pass any act to organize this Territory, and the organic act is a relic of colonial barbarism. The Federal officials are usurpers, and have no business here."

THE JUDGE'S DEDUCTIONS.

It is plainly to be seen that the legislators and popular leaders of Utah regard those military and civil public servants who, in Utah, acknowledge their paramount allegiance to be due to the national Government as being "guilty of treason," and designing "to be punished with death."

THEOCRACY—AMAZING STATESMANSHIP.

I might proceed at greater length in quoting from and commenting on the peculiar legislation of this Territory. But enough. I have borne steadily in mind the doctrines quoted in the outset from the Supreme Court of California, and from Montesquieu. And what have we found? Why, we have found that Utah is a Theocracy, a spurious Theocracy in the heart of the Republic! What