"That Section 388 of 'an act regulating the mode of procedure in criminal cases,' approved February 22d, 1878, be repealed and the following be substituted in lieu thereof:

"SECTION 388.—After conviction of an offense not punishable by death a defendant shall, upon application therefor, be admitted to bail as a matter of right."

In response to this measure Governor Murray forwarded to the House the following veto message:

TERRITORY OF UTAH, EXECUTIVE OFFICE,
Salt Lake City, Jan. 25, 1886.

Hon. W. W. Riter, Speaker of the House of Representatives:

SIR—Section 388 of "An act regulating the mode of procedure in criminal cases," provides as follows: "After conviction of an offense not punishable by death, a defendant who has appealed may be admitted to bail; first, as a matter of right, when the appeal is from a judgment imposing a fine only; second, as a matter of discretion in all other cases." The bill now in my hands [H. F. No. 31] for approval provides as follows: "That section 388 of "An act regulating the mode of procedure in criminal cases,' approved February 22d, 1878, be repealed and the following be substituted in lieu thereof:

"SEC. 388—After conviction of an offense not punishable by death a defendant shall, upon application therefor, be admitted to bail as a matter of right.' With few exceptions the rule for the admission of 'defendant to bail after conviction' leaves the question to the discretion of the court, but should be allowed upon a proper showing of the court, when it may be done. It would be detrimental to the administration of public justice and should be given as a matter of right by an arbitrary statute in cases only in which the peace and welfare of society may not be endangered. Under the bill before me a defendant convicted of murder in the second degree or guilty of rape and other infamous crimes may prosecute an appeal and on application therefor be admitted to bail as a matter of right, and by operation of law at once be turned loose upon the society he has wronged. Under the practice governing appeals the courts will be left powerless to control or correct this outrage upon the public. The present law has been fully sustained, and the rights of A defendant under its provisions determined by the Supreme Court of the United States in the late case of the United States vs. Rudger Clawson. The courts have wisely exercised the discretion imposed upon them in granting and denying bail, as the merits of the case suggested, and the practice has uniformly proved beneficial in executing the law. In my opinion, by depriving the courts of discretion in this very important feature in criminal procedure, and which the bill before me does, we place in the hands of those who seek to defeat the execution of the laws the power of trifling with justice, and to delay and defeat the punishment prescribed by law against those who stand convicted of public offenses. For these and other reasons which present themselves, I return the bill to the House to which it originated, without my approval.

Very respectfully,
ELI H. MURRAY, Governor.

Avoiding the only specific or well-founded objection raised by His Excellency to the former bill, a second bail bill was passed, as follows:

"After conviction of an offense, a defendant who has appealed shall, upon application therefor, be admitted to bail pending said appeal as a matter of right, where the offense charged is not murder, rape or other infamous crime, punishable with more than five years in the Penitentiary, and in these cases he may be admitted to bail as a matter of discretion when the offense charged is not punishable with death."

To this measure the Governor again responded with a veto, in the following words:

TERRITORY OF UTAH,
EXECUTIVE OFFICE.
SALT LAKE CITY, Feb. 9, 1886.

To Hon. W. W. Riter, Speaker, House:

SIR—The present law governing bail was taken from the California code, from which much of our law is copied. The practice which the bill before me proposes to change continues in California, New York, and, as a rule, throughout the United States.

The practical results, should this bill become a law at this time, will be to supplement and aid the purposes of those who for years have been and now are combined to defeat the execution of laws of the United States.

The defense fund, to which I have heretofore asked your attention, has been applied for this purpose not only in Utah, but in our neighboring Territories of Idaho and Arizona, in the vain hope of successfully defending the system of polygamy.

The fact that the dockets and time of the courts are taken up in cases growing out of polygamy, and that every technicality known to the law has been resorted to in order to delay and defeat the execution of laws denouncing the system, imperatively demands of the Executive to retain every statute which is just and applicable that guards the administration of justice.

The section sought to be changed is applicable and just, because it has been sustained by the Supreme Court of the United States, and materially aids in the punishment of public offenders, and is a time honored practice under the common law. Under the bill proposed, the rich man, or the man shielded by powerful confederates, after conviction, will go at large, and the poor man and stranger will go to jail.

As I am in sympathy with the Government in the endeavor and am charged to see that "the laws are faithfully executed," I must again withhold my approval from this H. F. No. 30, or any like measure under and through which both national and Territorial laws will be delayed or defeated in their execution,

I have the honor to be
Very respectfully,
ELI H. MURRAY.
Governor.

Thus in the exercise of his absolute and unrelenting sway, the Governor has made it impossible for this Legislature to provide proper and needed protection of personal liberty.

In the two veto messages upon this subject, objections are multiplied without number. Many of the claims advanced upon their face are shown to lack material essence. They are too trivial for consideration. The only possible objection of real weight was announced in the first message, and was obviated in the second bill. The Governor's assertion that the United States Supreme Court had fully sustained the present law and completely determined the rights of defendants thereunder, has no relevancy. The Supreme Court did not say that simply because the lower courts had exercised the discretion granted them by law, that therefore the Legislature had lost its discretionary power to amend or enlarge the statute. That august tribunal left to us as the chosen legislators for a free people, the right which his excellency has persistently withheld from us, to use our discretion in providing changes in existing statutes for the benefit of this Territory. The Governor's message indicates the theory that in matters relating to the rights of person, the judges alone have the authority to use discretion. He seeks to make a point against this measure, because it would permit the rich man, or the person possessing many friends, to go about his business under bonds, while the destitute and friendless would be cast into jail. Is not this the case universally where bail is permitted? If this be a valid objection to the proposed bill, then all bail laws should be repealed, and every man, rich or poor, high or low, innocent or guilty, when accused of crime should be at once immured within a dungeon. Because, forsooth, his excellency would have equal justice or injustice for all. His other objections are similarly without real significance in a political or legal sense. His actual reason, the inspiring motive of his vetoes, is unmasked in his second message. Having exhausted all imaginable fictitious claims, he is at length forced to give the true one, which is practically a sweeping admission that such a law would result in extending the right of bail to alleged offenders against United States laws in this Territory. His excellency's objections, so far as they are tangible, have now been stated.

The people of Utah Territory—speaking through the unanimous voice of their chosen legislators, declared that an enlargement or change of the law regulating bail was necessary. It is true that the practice was here as in some—not all—other portions of this country, to leave to the discretion of the courts the power to grant or withhold bail pending appeal in certain cases. For many years this power was wielded here, as in other places where it is held by the courts, in moderation, mercy, and impartiality. No one class of offenders was singled out for special favors. No one class was selected for particular vindictiveness. But later, with growing and cruel adverse sentiment to the people of Utah, with an imported judiciary, boastfully hostile to their property and personal rights; with an almost entire body of officials backed by press and pulpit upholding any scheme directed against them, this discretionary power in the hands of the judges was made an engine of injustice, oppression and inhumanity. Under these circumstances, the Legislature, acting in consonance with public weal, passed the bail bills. But we could not overcome the autocratic whim or prejudice of the one man whose awful nod is made superior to the expressed will of 200,000 people.

Of the legal right of the Legislature, under well-founded principles, to make such a law there can be no question. There is no reason to doubt that if such a manifestly good and impartial measure had passed to Congress, that great body would at once have given the necessary approval. The entire tenor of our laws, from the Constitution down, is to provide as much personal liberty for the citizen as possible; and bail is allowed to people involved in criminal proceeding in order that no man possessing the power of securing his appearance for final judgment, need suffer an hour's imprisonment until his case has been conclusively and irrevocably decided by the court to which it is last to be appealed. The discretionary power to the courts to allow bail pending appeal is nowhere granted for the purpose of giving judges the right to assail special individuals. And when this discretion is exercised venomously and not alone for the purpose of securing appearance of defendants, it should be withdrawn; and in any other portion of the country than Utah, it would be abrogated by legislative enactment.

It has been announced by Blackstone, Bishop, and other famed apostles of the law, that bail is one of the creatures of civilized government, and is in fact a crystallization of the purest and most humane interests of man in his best estate—such a creation as grows out of that feeling to be charitable, and that desire to be just, which only Christian natures and progressive races can extend to their fellow men. Article VIII of the amendments to the Constitution of the United States says, "excessive bail shall not be required," and if excessive bail is unconstitutional under this amendment, what shall be said of the law that permits the denial of bail altogether, and that, too, in a misdemeanor, the smallest offense known to the law? The practice in every State and Territory of the Union, we believe, whatever may be the statutory law upon the subject, allows bail pending both trial and appeal. Upon this subject Bishop says:

"It is, perhaps, therefore, to be accepted as the common law doctrine, that if the case has gone to final sentence, and the prisoner is taken in execution, he cannot have bail while he is pursuing measures to have the judgment reversed. But this doctrine has been changed, and bail in proper cases allowed, in England, by recent statute; and the same is probably true in many or most of our States."

Bassett, in his criminal pleadings, says, that "Even after conviction in a case not capital, a prisoner may, under the rules and practice of the common law, be discharged on bail to appear and abide the sentence of the court," Davis vs. State; 6 Howard (Miss), 399; and ex parte Dyson, 25 Miss., 356.

The common code of Iowa, page 613, sec. 4,107, says: "All defendants are bailable both before and after conviction, by sufficient sureties, except for offenses heretofore punishable with death."

The Constitution of the State of Texas provides, that "all persons shall be admitted to bail on sufficient sureties."

If, therefore, the practice in other States and Territories of the Union allows bail pending appeal, why should it not be allowed in Utah? Is a man to be treated as a criminal in Utah simply because he is accused of a crime? Was the Legislature to sit silently, and see revived the dark and horrible rule of the Doges of Venice, when an anonymous charge thrust into the brazen lion's mouth by some personal enemy, meant a man's conviction and death? It would seem so, for the reason that the one man—in the autocratic exercise of a power which he has shown himself totally unfit to wield—has so decreed it. Bail will do for other places, but not for Utah, and this doctrine is forced upon us in defiance of law and precedent.

Not only is the right to bail permitted by law and precedent elsewhere, but also its kindred right, that of appeal, the inherent and constitutional right of every citizen, is strongly guarded by the laws of every State and Territory in the Union. In fact the whole spirit and genius of our laws, from the Constitution down, provides for the perpetuity and preservation of this right. But of what value is the right of appeal if bail pending the decision of the higher tribunal is denied and the accused is being punished the same as if he were convicted? If the crime with which he is charged is a misdemeanor, he may be imprisoned pending appeal to the Supreme Court of the Territory for a longer term than the longest sentence that could be imposed were he found guilty. And if the charge is such that he would be entitled to an appeal to the Supreme Court of the United States, if bail were denied him pending the same, he might be imprisoned twice or thrice as long as the longest sentence that he could receive. Were he ultimately acquitted, he would have suffered like a common criminal during all the time that he was prosecuting his appeal, and yet be all the time innocent. Were he guilty he would suffer a double penalty, one while prosecuting his appeal and one after final judgment, so that a denial of bail pending appeal is equally unjust whether the prisoner be guilty or innocent. Whether guilty or innocent, alike he has no redress. If innocent, he must suffer like a criminal, because he is accused, and if guilty a double penalty because he appeals. Thus the right of appeal, designed to be a safeguard of liberty and a bar to injustice, with the right of bail denied, becomes a delusion and a snare, by which a double punishment is inflicted upon the guilty, and equally harsh and cruel punishment inflicted upon the innocent. In order, therefore, that the right of appeal may be of any practical benefit to the accused, bail pending the same must be granted, and justice, humanity and law alike demand that it should be granted in every case where there is a reasonable certainty that bail will produce the defendant in court when wanted. Even in civil cases, the judgment debtor may stay execution when he appeals by giving a bond that he will abide the decree of the higher tribunal; and shall we continue a system which places a man's property rights above personal liberty?

In view of all of which we have here set down, and of the greater measure of truth which exists in the same direction, we respectfully claim that the bail bills vetoed by by His Excellency, Governor Eli H. Murray, were strictly within our sphere of legislative authority. We claim that the vetoes of said bills were not given to advance the cause of justice, to benefit the commonwealth and aid in the execution of the laws; but rather to gratify private resentment, to permit bigoted courts to heap further indignity and wrong upon a special and proscribed class, and to add another injury to the many now suffered by this devoted Territory.

Respectfully submitted,
JOSEPH A. WEST,
Chairman special joint committee on the Governor's vetoes.

On motion of Mr. West, it was decided by the House that the absent members (who had a reasonable excuse for their absence) should have the privilege of recording their vote on these resolutions.

The Council having having passed, in an amended form, agreeably with the suggestions of the Governor, the bill amending the charter of Morgan City, the House concurred by unanimous vote, and the bill was sent to the Governor.

The Governor approved the following House bills: Numbers 20, 27, 32, 39, 60, 64, 65, 46, 48, 71, 75 and 80.

House bill 66 was amended in accordance with the suggestions of the Governor, and passed.

A message from the Governor was received vetoing House bill 49, prescribing the qualifications of electors, etc., which, together with the veto, will be found elsewhere in this issue.

Mr. Smoot moved that as there still remained in the hands of the Territorial Treasurer 40 of J. A. West's maps, the custodian be instructed to furnish each country member with one to enable him to find his way home. The resolution was received with laughter, and tabled.

The *Herald* company sent a receipted bill for the copies of that journal furnished the officers and members of the House during the Legislative session. This action was inspired by the withholding by Government of the *per diem* of said officers and members, and it was received with thanks.

By unanimous consent, Mr. McLaughlin presented a bill amending House bill 82, for the payment of the officers of the House and for other purposes; read the first time and referred to the committee on judiciary with instructions to report at its earliest convenience.

The sergeant-at-arms was instructed to furnish each member of the House with a bill for stationery, etc., and require each to pay the amount of his individual bills, and thus release the sergeant-at-arms.

The substitute for House bill 82 was killed in committee.

At 3:40 p. m. the House took recess till 8 o'clock and at that hour resumed business.

A message was received from the Governor vetoing House bill 29.

Mr. Thurman presented a joint memorial to the Senate and House of Representatives of the United States, petitioning for a grant of land adjacent to the Territorial Insane Asylum to be made to that institution; adopted.

Another message from the Governor was read, vetoing House bill 65. The amendment suggested by the Governor was concurred in and the bill repassed by the House.

Mr. Thurman, by unanimous consent introduced a bill for the benefit of prisoners confined in the Utah Penitentiary, the full text of which will be found elsewhere; referred to the committee on reform school.

The Governor, in another message, returned House bill 62, suggesting an amendment, which was concurred in by the House.

The Council sent to the House substitute for Council bill 38, which that body had passed; referred to the committee on education.

Mr. Creer introduced a bill in relation to water rights, etc., a substitute for H. F. 14, which was lost. Read first, second and third time, and, under suspension of the rules passed.

The committee on penitentiary and reform schools recommended the adoption of amendments to H. F. 84, by striking out the words "for good conduct."

The bill passed by a vote of 16 to 4.

Mr. Thurman introduced a joint resolution for the redemption of jurors' certificates for the years 1882 and 1883, authorizing the Auditor to issue warrants for this purpose. Read once, then second time by its title, and, under suspension of the rules, the third time and was adopted.

The substitute for H. F. 38 was adopted and the bill passed.

The committee on live stock reported back House bill 29, as amended to meet the objections of the Governor, and the bill passed again.

The Council having passed a substitute for H. F. 43, it was sent to the House, amended and passed.

Messages were received from the Governor, announcing his approval of House bills 77, 79 and 8, and his disapproval of House bill 50, the last of which read as follows:

Hon. W. W. Riter, Speaker of House of Representatives: SIR—I herewith return H. F. No. 50 without my approval. Probate Judges are the presiding officers of county boards of equalization and therefore are the most disqualified of all others, officers or citizens, to compose a Territorial Board of Equalization.

The bill names a Territorial Board, to consist of seven persons, six of whom are probate judges. Under the law the Board cannot be constituted as this bill proposes.

This subject is an important one, and the necessities of the Territory demand, and I trust we may yet perfect, an inexpensive and well guarded law.

Very respectfully,
ELI H. MURRAY, Governor.

The bill was referred to the committee on ways and means to obviate the objections, if possible, and later on was with the veto message tabled.

COUNCIL—MAR. 12, 3-15 P.M.

A message was received from the House announcing the Governor's approval of five House bills.

A communication was received from the Governor, announcing his approval of C. F. No. 4, a bill amending sec. 70 of the code of civil procedure; and C. F. No. 9, a bill amending sections 212 and 214 of the compiled laws of Utah.

A message was received from the House, containing the report of the joint committee appointed to consider the vetoes of the Governor, reported their resolutions upon the bill apportioning the legislative representation of the Territory of Utah; read and concurred in and ordered spread upon the minutes of the Assembly.

C. F. No. 46, was returned by the Governor, making certain suggestions, which were adopted; and this bill, which amends section 6, chapter 28, an act in relation to the manufacture and sale of liquor, etc., was approved.

A communication was received from the House asking that a joint committee of three from the House and two from the Council be appointed to memorialize Congress, requesting the repeal of the absolute veto power, and asking for such other relief as the circumstances of the Territory of Utah now demand. Messrs. Barton and Hammond were appointed on behalf of the Council.

A communication from the House told of the rejecting by the Representatives of C. F. No. 45; another announced the Governor's approval to several House bills; and a third that the H. F. R. has been passed, authorizing the redemption of outstanding jurors' certificates for 1882 and 1883 in civil cases; this latter was read the first, second and third times and rejected.

A communication was received from the House announcing the report of the joint committee on the memorial to Congress; report adopted.

A message was received from the Governor wishing the members a safe journey home.

The Council notified the House that its table was clear.

Mr. Hammond moved that a vote of thanks be tendered the officers of the Council for the able manner in which they had discharged the duties of their respective offices; carried.

The House having notified the Council that its table was cleared, Mr. Sharp moved that the Council adjourn without day.

Benediction by the chaplain.

HOUSE MARCH 12.

At 2:15 Mr. King reported a bill for impounding animals and defining the qualifications and duties of poundkeepers, which under suspension of the rules passed.

At 3 a. m. Mr. King called up the bill to prevent the spread of contagious diseases among stock, which was read and, under suspension of the rules, passed.

At 4 a. m. recess was taken, subject to the call of the Speaker.

At 9 a.m. the committee on judiciary reported adversely on House bill 83 for the payment of officers of the Legislature, and for the support of the Insane Asylum.

Mr. McLaughlin, who introduced the bill, in response to the Speaker, said he had nothing to say except a loud "No" to the adoption of the report. The report was adopted.

The chairman of the joint committee on vetoes reported resolutions relative to the vetoes of the jury bill, appropriation bill, and the bill to amend the charter of Ogden city; adopted.

At 11 a. m. Mr. Howell, by unanimous consent, introduced a bill to provide revenue for the Territory of Utah and the several counties thereof; read twice and referred to the committee on ways and means; reported on and lost on a tie vote—9 to 9.

The Council notified the House that it had passed C. F. No. 35, in relation to trusts; read and referred to the judiciary committee.

Mr. King introduced a bill to amend the penal code: killed at its birth.

Mr. King introduced a bill to provide for the assignment of insolvent debtors; read once and referred to the committee on manufactures and commerce.

Mr. Lund presented a communication from Mr. Anderson, who was excused from attendance in consequence of the dangerous illness of one of his children.

The Council having passed C. F. 45, in relation to justices' courts, etc., it was read twice and filed for further action.

Mr. West in the chair.

The committee on manufacture and commerce reported recommending the passage of House bill 88, to provide for the assignment of debtors; report adopted and the bill lost by a vote of 6 to 7.

The Governor to-day approved House bills 62, 29, 15, 14, 65.

[Part of the House proceedings are unavoidably crowded out to-day.]