determined to prohibit the
of any Mormon proselytes
York, or their passage
the Canadian frontier at De-
would be necessary to de-
profession of Mormonism
offence in itself, and to in-
a kind of inquisition of the
opinions of immigrants. It
ely conceivable that legisla-
ould go this length, and yet
proceed to this extremity
to be sufficient for the pur-
in view. And, whatever
e done by the United States
ress, it is quite inconceiva-
that our Parliament should
any action to confer on the
utive Government a power of
ering with Mormon emi-
These deluded people have
ed against no law of ours, and
could be suggested as likely
s that could extend to them
ormonism is presented to the
erts it has attracted in the
nd counties and in Welsh
s—and it probably has the
appearance in Scandinavia
Northern Germany—it offers
promise of a simple, well-
ed community, where labor
deed, the lot of all, but where
is lightened so that it is never
d and never penurious, and
kind of image is reproduced
triarchal sufficiency and con-
ment. Polygamy is kept in
background or perhaps wholly
red, and the rewards of a land
g with milk and honey, a
of beeves and sheep, are in-
upon. Where poverty is un-
n and drunkenness is un-
n, and want drives neither
to crime nor woman to vice, a
ised land is evidently revealed
e poor. The West has been
Eldorado of mankind ever
it was discovered, and these
peasants of Northern Europe
carcely be harshly blamed if
are drawn by the pictures of
rthly paradise opened to them
Utah. But how can legislation
with feats like these, or, rather,
can the legislatures of the nine-
th century undertake to overule
n? Three hundred years ago
ight have been easy to sup-
Mormonism, and our fore-
ers would not have hesitated to
t; but the task is one from which
men of to-day must shrink al-
t instinctively.
he despatch of the United States
ernment will presently come
re us in detail, and the full par-
lars of it may modify the im-
sions produced by the telegra-
dispatch. At present we see
y difficulties in the pursuit of
olicy it foreshadows, and the
rts of the Transatlantic liners
perhaps apprehend others,
which we have not touched.
order could be issued forbid-
the landing of Mormon con-
at New York, the owners of
nships may be much embar-
ed. They can scarcely be for-
den to take passengers here, and
ed, the obligations thrown
n them as carriers may perhaps
rain them to take them, and
they might find their passen-
forbidden to land at the other
of the voyage. This simple
ibility provokes a repetition of
uestion that must have occur-
o those who read the analysis
e dispatch of the United States
ernment—whether they have
ously considered the difficulties
e task they have undertaken.
London Times, Aug. 12th.

THE TAX CASE.

SION OF CHIEF JUSTICE HUN-
TER.

Sutherland
vs
Clawson et al.

Mr. Justice Field in French vs. Edwards 13 Wall. 511 *in delivering* the opinion of the Court states:

"There are undoubtedly many directory requisitions intended for the guide of officers in the conduct of business devolved upon them, which do not limit their power or render its exercise in disregard of the requisitions, ineffectual. Such generally are regulations designed to secure order, system, and dispatch in proceedings, and by a disregard of which the rights of parties interested cannot be injuriously affected. Provisions of this character are not usually regarded as mandatory unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated. But when the requisitions prescribed are intended for the protection of the citizen, and to prevent a sacrifice of his property, and by a disregard of which his right might be and generally would be injuriously affected, they are not directory but mandatory. They must be followed or the acts done will be invalid. The power of the officer in all such cases is limited by the manner and conditions prescribed for its exercise."

Applying the rule as thus laid down, and which so far as this Court is concerned, establishes the law, to the case now under consideration, it will be our duty to find out by studying the different sections of the revenue law of this territory, which are the directory and which the mandatory provisions thereof; which are designed to secure order, system and dispatch in proceedings; and which are intended for the protection of the citizen. When by this mode the distinctive qualities of the various provisions are reached, there will be no very great difficulty in arriving at the merits and demerits of the demurrer.

For the purposes of this decision only such provisions of the law as are deemed mandatory, will be referred to. Such as are directary, can have no bearing on this case, at least so far as the state of the pleadings are concerned.

Sec. 2 of the act requires that all taxable property shall be assessed at *a fair cash value*. The purpose of this requirement must be, to bring *all property* up on an equality of *taxation*, and as is said by Manning Judge, *in* Clark *vs.* Crane, 5 Mich. p. 153. "There cannot be equality of taxation without equality of assessment, where all property is not assessed by the same standard." That standard has been wisely fixed by the law in the present case, and not left to the discretion of the collectors and assessors. The object of the provision in our statute must therefore necessarily be, to secure equality of taxation, and being so, the taxpayer alone is interested in this part of the law, and its provisions must be for his protection, and to enable him to reap the full benefit of it, just what the law requires to be done, must be done, and it is his right to know it is done, and done in the manner prescribed. The manner or mode prescribed by the statute is the only manner or mode by which it can be done, and the collector and assessor has no discretion in the matter. What he is required to do in this regard is not designed to secure order, system, or dispatch of business, but is designed as a means whereby the rights of parties interested, namely the tax payers, cannot be injuriously affected.

Sec. 4 of the act provides, and requires, as soon as the assessor and collector shall have filed his bond, the county clerk * * shall furnish him with a suitable book conveniently ruled throughout, and headed in the way prescribed by the form, therein specially set forth.

The command of the statute is imperative, mandatory, and the form by it prescribed is fixed and determined, set out in detail and ample in all its parts. No discretion is given to the assessor and collector in the matter, nor to the county clerk. He is required to furnish the book just and exactly in the form provided. It is a statutory ferm, made out and inserted in the statute, perfect in all its parts, and it is as necessary on the part of the county clerk to follow it as it is incumbent upon him to furnish the book. He cannot take from it nor add to it, nor can the assessor and collector, except in the manner provided in the following sections of the law, and these exceptions do not relate to nor affect the form as such.

Sec. 6 requires that the assessor and collector shall annually present the tax list to the county court at its June session, etc.

Sec. 7 requires that after the adjournment of the June session, the clerk of the court shall write upon the head of the tax list the territorial and county rate per cent. for that year, and set each person's amount of the territorial and county tax, in the proper columns opposite his name, and furnish it to the assessor and collector, etc.

The object and purpose of this requirement is, that by it the taxpayer may be given the opportunity to know the rate per centum at which the assessed valuation of his property is taxed, and to know that such rate is uniform in its application to the property of all the other taxpayers. Having had first the opportunity of knowing that his property and that of all the other taxpayers in his county, has been assessed at a fair cash value, and that the tax list has been made out strictly in conformity to the law, and been presented to the county court, he has the further right to know that the rate per centum, which he is called upon to pay as tax, is no more or less than he should pay, and that all others are assessed to pay an equal per centum.

These are the mandatory requirements of the statute, and are so because they are all clearly for the protection of the taxpayer in the prevention of a sacrifice of his property, and by a disregard of which on the part of the officials, his rights might and generally would be injuriously affected, and are therefore such as it is not only incumbent upon the office to follow, but are those he must follow, only and in the manner prescribed by the statute, In the duty of obeying them he has no discretion.

In the event of it becoming necessary for an officer to institute legal proceedings for the collec ion of a tax, to make his complaint good, he would first have to set out that he was the legally constituted authority to collect the tax, and that all the various mandatory requirements or provisions of the statute had been fully complied with—nor that a general compliance had been had—but that each step specifically stating it had been taken, so that the court and the defendant might have the full knowledge of all the particulars. To entitle him to a recovery, he must show that the tax is a legal and valid tax, and to do this he must plead in extenso, so as to show that the mandatory provisions have been complied with in each and every particular. He must not only so plead, but he must be able to prove all that he pleads. A failure to do the one, subjects his complaint to a successful demurrer, and of the other, his case to be a ailure of recovery. And it is necessary that the same regularity should be observed in an answer wherein the defendant attempts to set up that his acts, whatever they were, were performed as an officer, and under and in pursuance of a statute.

In this case I do not think the defendants answer sets up as a matter of defence, the various statutary provisions under which he seeks to shelter himself, in that full and perfect manner it is necessary for him to do, and that therefore as to such parts of his answer to which the demurrer is directed in that regard, the demurrer is sustained.

As to that branch of the case wherein it is claimed by counsel for plaintiff, that the tax law is invalid, or that a tax assessed under it is void, because of the invidious and pernicious effect of the enforced construction put upon it by the officer, and of the manner in which taxes have been remitted, I have to say:

I do not think there can be any doubt that this section on its face intended only that the county court should remit taxes when in its judgment they were erroneously assessed. The mere fact that such power is given by the law does not render it vicious. Like provisions exist, I undertake to say, in nearly every law in the Union pertaining to revenue, if not to the county Court to some supervisory board or officer.

The fact that it has been universally continued by the territorial officers, so far as to make it invidious cannot determine the judgment of this court, or that there has been an invidions enforcement so notorious as to be common knowledge or information. The mere assumption of a right to do a thing, by an officer, claiming to act under a law, and to such manner as may be a forced construction of the law, no matter how long pursued does not affect the validity of the law.

It would be equally unjust on the part of the court to declare a law void, which on its face was deemed valid, on the ground that it had been used perniciously by bad men to the furtherance of their evil purposes, as it was for these men to so use it.

The Court cannot presume that there ever was a time, even in this Territory, when it was not possible for this court to protect the citizen in his rights, and during all the years referred to by counsel within which the unjust construction was given to this provision of the law by the local authorities, those who felt themselves aggrieved had their remedy. I cannot now hold the law to be an invidious one and therefore that it is a nullity, basing upon such opinion such reasoning as the counsel have advanced. If a valid law is improperly enforced on an enforced construction, it is the duty of the court to construe it on a proper case presented, and in a proper case to enforce that construction. If persons aggrieved by an unholy, unjust and invidious construction of a law by evil men, do not seek their proper legal remedy at the time of the grievance, or while the remedy is open to them, the fault is their own.

The branch of the demurrer raising the question as to the validity of the law is therefore overruled.

The proviso to the repealing section of the act of Feby. 22, 1878, saves from impairment, any right accruing, or any liability forfeiture or penalty incurred under the acts repealed, and preserves any suit, prosecution or proceeding begun or pending previous to the repeal, and all such rights, forfeitures, liabilities or penalties may be enforced, as if said repeal had not been made.

By the old law, the tax was made a lien on the property assessed. No particular method is prescribed in that law for its enforcement. It would seem that the only means of enforcing the collection of a tax was by seizure and forfeiture of the property. No warrant was provided for, and the general course pursued by the officer was simply to make a seizure and sale of the property. In this case there was a seizure of personal property. No sale has been made because of the interspoition by the claim of the plaintiff. It is claimed by the counsel for the plaintiff that the defendant, at the time he made the seizure, had no legal authority for doing so, but that he had a remedy against the defendant—it was by suit.

By carefully reading the proviso of section 22, act of February 22nd, 1878, it will be seen that it saves from *impairment* any right accruing, or any liability, forfeiture, or penalty incurred under the acts repealed, and *preserves* any suit, prosecution or proceeding begun or pending *previous* to the repeal, and all such rights, forfeitures, liabilities or penalties *may be* enforced as if said repeal had not been made.

That is, that any right accruing or any liability, forfeiture or penalty incurred under the repealed laws shall not be *impaired* by the repeal. That any suit, prosecution or proceeding *begun or pending previous* to the repeal shall not be affected by the repeal.

That all rights, forfeitures, liabilities or penalties incurred under the repealed acts *may be* enforced *notwithstanding* the repeal.

The last sentence of Section 33 provides:

All delinquent taxes due and remaining unpaid on the 1st of March, 1878, shall be collected of the person assessed in accordance with the provisions of this act, by the collectors of their respective counties.

Clearly this refers to the delinquent taxes under the old law. From the very terms of the law, as it now is, and its date, there would have been no delinquent taxes due and remaining unpaid March 1, 1878, arising under it. If this be so and there can be no doubt it is, then the right to proceed for the collection of the tax in this case, was a right incurred under the old law, and all such rights, section 33, of the new law provides may be enforced, notwithstanding the repeal. How? Why, in the manner provided by section 28 of the new law. If in this way, then he certainly would not proceed by distraint for such taxes.

The seizure of the property of the plaintiff was made on the 3d day of December, 1878.

The new law was approved February 22, 1878. On the day of its approval it became the law of the Territory, and the defendant was bound by its provisions. From thence forward he could only sue for the taxes, and had no right to seize when he did, and his attempt therefore to justify his acts by pleading that they were in pursuance of the statute will not hold, and his answer is demurrable. The demurrer to that branch of the answer is sustained.

If the officer who made the list had retired from office, and the seizure of the property had been made by his successor before the enactment and approval of the new law, his seizure would have been valid, if otherwise, the law had been complied with and the tax was a valid existing tax, and it was delinquent. But this question cannot be made, because I now hold that the right of seizure was taken away by the new law.

NOTICE.

In the Probate Court in and for Salt Lake County, Territory of Utah.

SAMANTHA RICHARDSON, Plaintiff, vs. THOMAS J. RICHARDSON, Defendant. } In Divorce.

The people of the Territory of Utah, to Thomas J. Richardson, defendant, Greeting:

YOU are hereby summoned to appear in an action brought against you by the above named Samantha Richardson plaintiff in the Probate Court in and for the County of Salt Lake and Territory of Utah, and answer the complaint filed therein, within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county; and if not within this county, but within the Third Judicial District of the Territory of Utah, within twenty days, otherwise within forty days.

This action is brought to obtain a decree from this Court dissolving the marriage contract existing between said plaintiff and you, and if you fail to appear or answer as by law provided, said plaintiff will apply to said court for the relief prayed for in her complaint, on file in said Court.

{SEAL.} In witness whereof, I have hereunto set my hand and the seal of said Court, in Salt Lake City, this 2d day of September, A. D. 1879.

D. BOCKHOLT,
Clerk of the Probate Court, Salt Lake County. wlm