

Monday, September 19, 1870

FEDERAL AND TERRITORIAL JURISDICTION.

We publish, to-day, another ruling on the vexed question of Federal and Territorial Jurisdiction...

The highest legal authorities in this Territory, we believe we are right in stating, have on former occasions, rendered decisions exactly the reverse of this...

But however extraordinary the grounds taken by his Honor the Chief Justice on this occasion, in assuming that the District and Supreme Courts of the Territory are U. S. Courts only...

If we recollect aright the U. S. Supreme Court has already rendered several decisions involving this much mooted question, in favor of Territorial Jurisdiction.

[SPECIAL TO THE DESERET NEWS.]

By Telegraph.

For WESTERN UNION Telegraph Line. Workmen injured.

AN ARMISTICE!

Plague among the Cattle of the Prussian Army!

BALLOON POST!

Alliance between Russia, Austria and Italy!

REPUBLICANISM RAMPANT!

CHOLERA AND YELLOW FEVER!

FOREIGN NEWS.

GREAT BRITAIN.

Paris press opposed to the restoration of Bonaparte's Government.—Julien Favre favors a European Republic.

LONDON, 17, 4 p.m.—News from Paris says that between Orlon and Jurisy, about eight miles south of Paris, the Germans had planted a battery. Heavy firing had been heard in that direction...

LONDON, Noon.—Prince Alfrecht with cavalry and artillery, passed through Provence on Thursday, and on Friday proceeded to Nangis. Advances from Tours, now the actual seat of the French government, complain of the frequent interruptions of mail and telegraphic intercourse with Paris and England.

LONDON, 17.—The Tribune's correspondent, writing from Rheims, on the 16th, says: "I had another conversation with Bismarck this morning; he said, positively that the Prussian government will not treat with any government not recognized as de jure that the only government of that character, in France, known to Prussia, is that of Napoleon or the Regency acting in his absence."

Shortly afterwards I met Count Helldel, Bismarck's councillor; he expressed great anxiety about the attitude of the United States, now that the French had proclaimed a Republic, saying, "we are anxious to have American sympathy on our side, but we can't treat with such a Republic as this."

Several shots were fired on the troops from private houses in Rheims. A workman, in Roederer's campaign, was wounded, shot a Hussar dead from the factory window. The workman was instantly killed by the troops. Roederer gave two hundred bottles of champagne to the comrades of the murdered man.

Generals Sheridan and Forsythe are here. The Tribune's correspondent at Paris writes that many of the forts are without casemates, and the garrisons can be easily shelled out. When the forts surrender nothing can prevent the bombardment of the city.

Letters received at the British Embassy, from the interior, show the utter powerlessness of the government. In many large towns the Red Republicans are supreme. Secretary Mallet, from the same Embassy, vainly attempted to reach the Prussian headquarters, on a special mission.

Jules Favre is exceedingly anxious about the maintenance of the power of the present government; he is in great fear that the Red Republicans should rise. The Tribune's correspondent, before Strasbourg, writes on the 14th, says: "The fire continues without intermission, and the walls are reduced to shapeless masses. The citadel is subjected to an increased fire from three sides; its principal walls, on the Kohl side, and many buildings adjacent to the citadel, have been fired. New batteries are now in position. The garrison fire is weak and sometimes it ceases for hours. No effort to repair the damaged outworks are made. Desperate efforts are made to convey ammunition into the city, and boats are frequently captured. Another telegraph, underground, has been discovered, running to Colmar."

LONDON 18.—The Prussians advancing on Paris have appeared on the heights of Villeneuve and Brunoy. The press of Paris, without exception, opposes the restoration of Bonaparte's government at Tours, and receives assurances, from every quarter, that the people are arming and hastening to the places of rendezvous.

The Tribune's correspondent, at Paris, writes on Friday, that he has gathered the following from a conversation with Jules Favre:

"Favre, thus far, has carefully avoided offending monarchial governments; should he fail to induce them to support France, he will throw himself unreservedly into the hands of the Republicans, and call all Europe, no matter of what nationality, to aid him in a crusade against monarchial institutions."

An attempt of the British embassy to communicate with the Prussian headquarters failed, because it was impossible to find, anywhere, a German officer commanding. No one could be seen but irresponsible uhilans.

ILLINOIS.

Arrested.

CHICAGO, 17.—The Tribune's Washington special says, the arrest of General Vandever, late collector of the third Ohio District, has caused considerable talk at the Internal Revenue office to-day. It seems that numbers of detectives have been making representations of various irregularities in the southern Ohio for some time past, and claiming great credit for the discoveries they have made; but there has been great impatience in the bureau at the small results. The expectation is that a considerable portion of the force engaged in searching for the frauds will shortly be discharged, unless special reasons for retaining them should arise. Persons of standing, who have been officially acquainted with the affairs of the third district since general Vandever's term began, regard the whole thing as the result of long continued efforts on the part of several disreputable detectives and blackmailers, who have at length, by various means, succeeded in imposing upon more respectable officers in the service of the district.

NEW YORK.

Fighting going on William will not recognize the Provisional Government—Napoleon's return opposed.

NEW YORK, 18.—A London special dated 18, says the Observer states, in official type, the prospects for peace are no better than at any time since the beginning of the war. Lord Lyons, on concluding negotiations between Jules Favre and Bismarck. It is said that a brief armistice has already been arranged.

A special to the World, dated London 17, says there was a sharp engagement yesterday on the line of the Orleans railway, near Corbell, between the advance of the Prussian left wing, and a body of the gardes mobile and French Tierses, supported by a detachment of the army of Paris. The Prussian cavalry were defeated on Thursday afternoon, near Guignes, and driven back on Melun, on the Paris and Lyons railway, which has been occupied in force on Wednesday by infantry and artillery. Yesterday morning a column of the three armies advanced from Melun upon Corbell, fourteen miles from Paris, with the object of destroying some flour mills and seizing the granaries at that point, and to throw forward a party to cut the direct line of the Orleans railway, two miles further north at Iuvly. The second object was attained, but the Prussians, having pushed on three miles further, to Abloen, were attacked by a superior force, and after a severe conflict were routed and compelled to retreat. The Prussian detachments which they had thrown up on the hill at Iuvly, commanding the passage of the Orge, the bridge over which river, has been blown up by the French. At the same time, the Prussians at Corbell, who had established themselves in a hamlet of the Kise, were attacked by a French force, advancing from Longjumeau, but they succeeded in maintaining their position. During the action, the extensive mills and granaries were set on fire, and all their contents not previously transported to Paris. In the suburbs of Abloen, many villas and private residences were set on fire, and the ancient Protestant Church, one of the few exempted by the reservation of the Edict of Nantes, was seriously damaged. When your special left Chartres a column of troops was moving out to renew the attack on the Prussians at Jurisy. The army of Calais, and the whole of the Calais was, this morning, declared in a state of siege, and put under martial law. Communications by rail and telegraph between Paris and Calais were yesterday, cut between Amiens and Paris. A detachment of Prussian cavalry attacked the station at Longjumeau, three miles from Amiens, capturing a train coming from Brussels, and burnt the buildings at the station. Communication between Amiens and Rouen, still, however, remains open. We have a rumor from Mons, by way of Ostend, that a force under Canrobert, on Wednesday attacked and defeated the Prussians near St. Quentin, and that the action was going on on Thursday near Leignerie. It is believed that Canrobert has formed a junction with the troops from Lille, Valenciennes and Aras, and that he is threatening the right wing of the Prussians before Paris at Compaigne.

A cable special to the Herald, dated Paris 17th, says Strasbourg is nearly untenable and the inhabitants are departing. The Prussians have been seen in front of Colmar and Mulhouse, marching towards Lyons. The Prussians crossed the Seine last evening near Athis, but were beaten back. Cannoneading is now heard at Tower, and Biotres. The King refuses to recognize the provisional government and he will only recognize the Emperor or Bazaine.

The committee of German workmen have made a protest against the war.

Victor Hugo's address to France, to-day, is exciting all classes to oppose the return of Napoleon.

The cattle plague has attacked the cattle of the Prussian army. The ambassadors of England, Austria, Italy and Turkey have left Paris. A balloon has arrived from Metz with letters. The disease among the troops on Government's island is malignant bilious fever; there have been nine deaths, the rest of the twenty-seven cases which have occurred are either entirely recovered or are in a fair way thereto. There have been no new cases within three days. The physicians state positively that the disease was yellow fever. Four of the crew of the brig H. G. Berry which arrived in the bay on Thursday night, had the yellow fever at Havana, and one died. Captain Stephen Pain died here, of cholera; his vessel attempted to go to Perth Amboy to avoid quarantine, but the revenue authorities discovered the dead body of the Captain among the cargo in the hold, and the vessel was detained.

Baron Henry de Rivere, who figured extensively in this country, was killed recently at Metz, while in command of a French regiment. It is believed that Europe is on the eve of complications more formidable and extensive than were dreamed of a few days ago. It is certain that the Bavarian government has been forced to declare that in no way, adheres to the project of consolidation with the North German Confederation. A formidable popular demonstration was made in Vienna yesterday, before the hall of the temporal Parliament, the German banner of 1848 was carried in procession and cries raised for a republic. The crowd was dispersed by the police and a few arrests were made, but no lives were lost. The excitement of the people in Prague, Brunn, and other cities of the empire is on the increase. The walls of the Romer in Frankfurt, were covered on Wednesday morning with huge placards calling on the people to prepare for the proclamation of a democratic and social republic. Similar placards were affixed to the main entrance of Paulus Kerche. The placards were printed in French and German, and were headed "By order of the Universal Committee of the European Republic." Groups gathered about them and the police tore them down. There is great excitement in diplomatic circles to-night over the report that an alliance between Austria, Italy and Russia has been completed, the object of which is to be the division of the Turkish Empire, the annexation of Prussia and Poland by Russia, the annexation of Prussia to Austria, and the surrender of the Italian Tyrol to Italy.

On Saturday, General Vinay made a reconnaissance from Paris, and discovered a force of 30,000 Prussians posted at Creteil. A skirmish took place, in which the French lost fifteen killed and thirty wounded. A cannonade followed lasting two hours.

Cannoneading has been heard in the direction of Fort Jorey and Charlton. It is reported that Folkenstein's command is added to the Prussian forces approaching Paris.

The French Institute, in the name of civilization, protests against the possible destruction by bombardment of the libraries, observatories, museums and galleries of Paris.

The corps diplomatique arrived to-day. A great many volunteers left Tours this morning, going northward. A French corps of eighty thousand men, under General Ducrot, occupy the woods of Clermont and Mendon. There was a fight yesterday between the Prussians and three regiments of the mobile guard, and a battery of artillery. The result was favorable to the French; the enemy fell back.

LEGAL DECISION.

TERRITORY OF UTAH, THIRD DISTRICT COURT, SALT LAKE CITY.

September term, 1870. Chief Justice McKean presiding.

CHALLENGE TO THE ARRAY OF GRAND JURORS.

In obedience to a venire issued to him on the order of Mr. Justice Strickland, the United States Marshal for the Territory summoned Grand Jurors for this term of the Court.

On the Grand Jurors being called at the opening of the court, and on answering to the call, counsel, for certain persons charged with offences against the laws of the Territory, challenged the array as follows:

First. The said Jurors were not drawn, selected and served as the laws of this Territory prescribe.

Second. They were not summoned by any officer of this Territory, authorized by law to serve the same.

The United States Attorney for the Territory demurred to the challenge.

Messrs. Hoge, Miner and Snow for the challenge.

Messrs. Hempstead, U. S. Attorney for the Territory, and Mr. Baskin, for the demurrer.

The Legislative Assembly of this Territory possesses large powers. The act of Congress organizing the Territory, approved September 9th, 1850, provides "That the legislative power of said Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act."

The act of Congress to organize the Territory (Sec. 9) provides "that the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and Justices of the Peace." The Assembly can no more add to this number of judicial bodies than it can abolish one or all of these. But by Act, approved Jan. 8, 1866, the Assembly has enacted that the Probate Judge in connection with three selectmen shall be known as the "County Court."

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The act of Congress organizing the Territory provides that "the said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction." It further provides that each of the said District Courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States.

There is any law prescribing the manner of procuring Grand and Petit Jurors in the Territory of Utah. It is an act of the Congress of the United States, or an act of the Legislative Assembly of the Territory?

Territory? If both, are they consistent with each other? And if inconsistent, which must prevail?

While acting by assignment in this District, Mr. Justice Strickland, "upon notification by the United States Attorney that a Grand Jury would be needed," "in the exercise of the discretion vested in him," ordered a venire to be issued by the clerk of this Court to the United States Marshal for the Territory. He did so in pursuance of those well known acts of Congress which prescribe this method of procuring juries in the Circuit and District Courts of the United States.

The act organizing the Territory, (sec. 10.) requires the Marshal to perform the same duties as the Marshal of the District Court of the United States for the then Territory of Oregon; and those duties were the same as those of the Marshal in the Northern district of New York. One of his duties is the summoning of Jurors.

In the case of *Erannigan vs. The People*, decided by the Supreme Court of this Territory, and cited on the argument here, the petit jury was not summoned in accordance with either the laws of Congress nor those of the Assembly. The conviction of the prisoner was therefore properly set aside.

Having considered the powers and limitation of the Legislative Assembly, and also of this Court, let us now inquire what the Legislative Assembly has done or undertaken to do in the premises.

As already stated, the Act to organize the Territory was approved September 9th, 1850, and on July 1st, 1851, more than two years thereafter, the Assembly seems not to have touched the question of grand and petit jurors for criminal cases in this court. Was there then no law upon this subject during those two years? Judge Snow, the senior member of this bar, to whose learned and exhaustive argument in support of this challenge, I listened with great interest and pleasure, was the first judge who sat on the bench where I now have the honor to sit; and that learned Judge, in pursuance of the Acts of Congress, ordered the venire to be issued to the United States Marshal for the Territory of Utah, and that Marshal summoned the jurors. I am not now saying whether that was right or wrong, but this I will say, that if it was wrong, then every man indicted and every man convicted during those years, was unlawfully indicted and unlawfully convicted.

But what did the Legislative Assembly do in January 1863? It enacted thus: "In jury cases, before the introduction of any evidence, the Court shall issue an order requiring an officer to summon, for that purpose, a reasonable number of judicious men, etc." and further, thus: "When necessary, the Court shall issue an order requiring an officer to summon fifteen judicious men, residents of the county, for a grand jury, etc." Whether the act was intended to apply to this Court or not, it makes no attempt to take from the Court the control of the venire.

The words, an officer, may mean, and should be construed to mean, the "proper officer of the Court,"—in this instance the United States Marshal; and that officer is left at liberty to summon whom he pleases, provided they be "judicious men." There is in these particulars no necessary conflict between Congress and the Assembly.

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But the Legislative Assembly, by Act of January 1866, amended in February 1870, has sought to take from the District Judge, the United States Attorney, and the United States Marshal, all control over the jurors of this court.

The challenge to the array may be overruled, and the juror thereunto summoned, let the Grand Jury be sworn.

Special Notices.

COSTAR'S EXTERMINATORS. For Bed Bugs, Lice, Fleas, etc. For Bed Bugs, etc. Use Liquid Exterminators For Moths, Bed Bugs, Use the Instant Powder. "Only infallible Remedies known."

NEW ADVERTISEMENTS.

SALT LAKE THEATRE. WEDNESDAY EVENING. SEPTEMBER 21, 1870. SPLENDID COMEDY BILL!

CAPTAIN CROXALL'S BRASS BAND! MR. ARTHUR A. NEEDHAM, THE TALENTED PIANIST.

SWEETHEARTS AND WIVES! Capt. CROXALL'S BAND Will Perform in the Orchestra.

THE WILFUL WARD. REDUCTION OF PRICES: Second Circle, Front Seats, 75cts., Second Circle, Back Seats, 50cts., Third Circle (all parts) 25cts.

GREAT BILL FOR SATURDAY NIGHT. J. S. WING. ELECTIC PHYSICIAN. OFFICE five Doors south of Greenback & Sons Furniture Store, Greenback Block, Salt Lake City.

NOTICE. WE WISH TO NOTIFY ALL PERSONS indebted to us, that their Notes and Accounts must be settled by October first to save costs. KIMBALL & LAWRENCE. Salt Lake City, September 13, 1870.

TO BUYERS OF HORNS STOCK. I will Sell from One to Two Hundred head of Cattle, consisting of COWS, CALVES, YEARLINGS, Two Year Olds and BEEVES, all in Good Condition, and now running on a splendid range, south-east of Cedar City, Iron County.

LOST. ON Sunday evening, in going from the residence of George Q. Cannon, to the residence of A. M. Cannon, a New Square, Black LACE VEIL. The finder will be rewarded by leaving it at A. M. Cannon's, one block east, and half a block south of the Depot.

ESTRAY. I HAVE in my possession, a small Black Spotted Mare, about nine years old, branded K on left shoulder. The owner is requested to pay charges and take it away. E. B. COOK. Salt Lake Corral, 2d South St.

LOST! ON Friday last, on Main St., near the Elizabeth Store, a GOLD NUGGET, about 2 cts. weight. The finder will be liberally rewarded on leaving it at this office. J. E. BROMLEY.

CREAR, ADAMS & CO. Manufacturers' Agents and Dealers in Railroad Equipment and Supplies, 11 & 13 WELLS ST. CHICAGO.

YALE LOCKS. SECURITY. BEST & CHEAPEST. OSCAR V. CERZABCK. MANUFACTURER'S AGENT. 408, California St., San Francisco, Cal.

THE ONLY PROTECTION AGAINST BURGLARS ARE YALE LOCKS. SECURITY. BEST & CHEAPEST. OSCAR V. CERZABCK.

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