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THE proceedings at the trial of the case between the U. S. Marshal and Warden Rockwood will be read with interest by the residents of this Territory. They may be surprised, but certainly cannot be disappointed, at the decision which has been rendered, for who could have expected any other decision from the known prejudices and character of the person who had it to make? Was it likely that a Judge who arrests, tries and imprisons citizens for drilling in the capacity of militia, because he assumes they violate a Governor's Proclamation, would decide that Territorial officers should not be held guilty for refusing to obey a U. S. Marshal?

We have frequently alluded to the combination or "ring" which has had an existence in this city. The trial of this case and the decision made upon it illustrates the purposes of this "ring." These transactions are in entire keeping with its programme. Our readers have, doubtless, a very vivid recollection of the chief features of the Cullom Bill. The members of the "ring" of which we speak, are banded together for the purpose of carrying into effect that bill as though it were actual law. Examine the conduct and decisions of the Judiciary and other officials for the past year or two, and if proof of this were wanting, it would be found in them. The object is to strip the people of their rights, of all voice and power in their own government and the framing of their own laws, and to centralize all this authority in the hands of the Governor, the Judiciary and their companions of the "ring."

When the history of affairs in this Territory during the past two years shall be read, it will be found that abuses and usurpations have been attempted upon the people which far exceed in enormity those inflicted upon the people of the Thirteen Colonies. If many of the officers who have been sent here had been the agents of a foreign government which had subjugated this Territory and people, they could not have acted with much greater tyranny than they have. Their language and acts towards the citizens have been those of foreigners and tyrants, who had no interest in common with the people among whom they dwelt, and who sought every opportunity to degrade and dishonor them. To prove what we say it is only necessary to review their careers since they came here.

But though they have been thus leagued together, and have had so many opportunities of showing the mean, dastardly and anti-republican spirit of which they have been possessed, what have the members of the "ring" accomplished? If they have been successful in a single scheme, we cannot call it to mind. But it is easy to recall their defeats, the exposure of their machinations and the bitter disappointments and rebuffs which they have met. These officials will yet find to their chagrin that it is an uphill and disgraceful business for persons in their position, in a republican government like ours, to war against the people whose paid servants they are. There is such an exhibition of baseness in men accepting office as governors, judges, secretaries and marshals, to act for the people, receiving wages from them and eating the bread which they furnish, and then betraying and fighting against them, that sensible people are disgusted at such conduct. This is precisely what many of the officials in this Territory are doing; they are the servants of the people, they choose, however, to ignore this, and assume all the airs of masters; and it is this feeling which has prompted the action in the case recently tried.

The people of this Territory take a philosophical view of such conduct. They look upon the members of the

"ring" as necessary to try them, to prove them and to make them perfect. Satan, according to their views, is a very necessary personage on the earth to carry out the economy of heaven in the perfecting of God's children. They view the members of the "ring" in somewhat the same light. He is the leader; they are the subordinates, and without just such trials of faith and patience as they furnish the people think they would not be prepared to enter upon that high destiny which they feel certain is in store for them.

Preliminary Examination of Warden Rockwood and Marshal McAllister.

As stated in yesterday's NEWS, the preliminary examination, before Associate Justice Hawley, of the case of Warden A. P. Rockwood and City Marshal McAllister, charged with resisting the U. S. Marshal in the discharge of his duty, in refusing to deliver to the latter the convict Killfoyle, without an order of Court, was commenced yesterday. Judge Morgan and Mr. Baskin were the counsel on the part of the prosecution, and Honorables Z. Snow, Thomas Fitch and S. A. Mann for the defense.

Most of the time from ten to twelve o'clock was occupied by the prosecution in examining Marshal Patrick, the only facts elicited being that the latter made a demand on Warden Rockwood, and latterly upon Mr. McAllister, for the prisoner Killfoyle, the former refusing to accede to the demand without an order of Court, and the latter refusing until an order of Warden Rockwood was presented, for whom he held the prisoner, all of which was conceded by the defense.

Judge Morgan alluded to the following authorities, as the basis for a conviction:

The act of Congress of January 10th, 1871; act of Congress, April 30th, 1790, section 22; act of Congress, March 2nd, 1831, chap. 29, section 2, vol. 4, U. S. Statutes at Large, page 488; act of Congress, May 31st, 1870, section 11, page 142, Laws of 2nd Session; and section 93, page 58, Laws of Utah.

The Court adjourned at 12 and met again at two o'clock, when the argument was opened by

Judge Morgan—I will say, by way of preliminary, that as an attorney I have been called on in this case to see that the laws are vindicated, a duty devolving upon me as an officer of court; and not only to see that the laws are vindicated, but that the individuals in the case have a just and proper trial. These are the duties of an attorney whenever called upon to act in a case as I am in this one.

Now, I call the attention of the court not only to the laws of the United States, but also to the law of the Territory; and whenever a law is violated by an officer, by any one holding a position of authority in which he should be an example before the people, it is worse than if he had been a more humble individual. In this case, if there has been any violation of the law, and the testimony shows that these parties charged have been guilty of this violation, then it becomes the duty of the court to administer the law, however unpleasant it may be and no matter who are the parties coming before your honor. Here is the law which I will read in the statutes of this Territory, and if it is found that these men have violated that law they are amenable to it as if they had violated any other law or any law of the United States. (Counsel read section 93, page 58, Laws of Utah). Gentlemen, no doubt, will take the position that this officer resisted here is a United States officer in the execution of his duties as a United States officer, and that they are not amenable; but he is an officer of Court, a Territorial as well as a United States officer; and if any person shall resist him as an officer of court, in the execution of any duty imposed upon him, then they are amenable to the law. (Counsel read from the law of April 30, 1790, with regard to resisting officers.) Gentlemen may complain because we refer to several statutes, and do not confine ourselves particularly to any one of them. I will say to the gentlemen that a party may be guilty of offences against the laws of a State and against the laws of the United States. As for instance: A man may be guilty of robbing the mail, when his offence is not only one against the laws of the United States, but against the State law, for larceny in taking money that may be in the

mail. Or in the case of a municipal corporation, a person may be amenable both to a State and a municipality under the license law and be guilty of two offences in the same act, either of which may be charged against him and he be punished for either or both. After reading the law again, counsel said: It will be contended probably that we have not shown sufficient authority in this person—the plaintiff—to entitle him to what the law would esteem a protection; in other words, to make these parties amenable to the law for obstructing him. It is admitted by the counsel for the defendants that he is the Marshal for this Territory. We find there was a Warden appointed under and by virtue of the law of this Territory, by the act of the Legislature in direct violation of the Organic Act which specifies that all officers of that grade are, by and with the consent of the Legislature, to be appointed by the Governor and to receive their commission. Here a legislature has taken the power into its own hands and said we will ignore part of the authority of the United States, and exercise this power within ourselves. They refuse to recognize the Executive, or at least his nominating power, and they proceed to nominate a man in violation of the Organic Act. Now the question is, is that man, under any circumstances an officer to have control of the prison? Suppose a man appointed by the Governor should demand possession of the prison, although not confirmed by the House or by the Council, who would have the legal right to take possession of that property? Could the Legislature take it away from the Executive, or would the Executive power be paramount? If the Executive power is greatest in this Territory, he being an officer of the government of the United States, and having within himself the power to administer and to see that the laws of the Territory are administered, would not the power exercised by him be paramount? I contend that it would; and that there the legislative control ceases; and if the Legislature undertake to violate or go against the Organic Act, they undertake to over-ride the Government of the United States to that extent. In other words, they set aside the power of the Government of the United States in a Territory, where we are only in a condition of tutelage. I know that my friend Snow claims a sovereignty for the people of this Territory; but I disagree with him in that particular; and maintain that a Territory holds the same relation to the United States Government that a municipal corporation holds to the State government. Such powers as may be conferred upon a municipal government they may exercise, and they are protected by the State therein.

Now here are certain powers conferred upon the people of this Territory, which the United States government say may be exercised; but in nothing in conflict with the laws of the United States, or the Organic Act which confers these powers upon the people. Now, if there be a reserved power in that Organic Act, then the people of this Territory cannot exercise that power. Such, I believe, the Court holds, and such I believe to be the proper construction to be given to the law, and to the extent of the power and authority acquired under the general government. This being the case, the Legislature of this Territory has attempted to exercise an authority that is not conferred upon it; it is without law and without justification.

Another point: Suppose that this officer (the Territorial Warden) had been regularly nominated, and had entered upon the duties of his office; that he had proceeded in conformity to the law, and had complied with every requisition of the law, and that the power to appoint him was actually possessed by the Legislature, and in the exercise of that power they had put him in this position, then what? He would continue to exercise that power up to the time when the United States should interpose an authority greater? (Counsel read from the reconstruction act of January 10th, 1871.)

Now we will begin with the conflict of right. The Warden of the prisons we will suppose, is properly and lawfully there, and that the United States enact a law that the prison shall pass into the hands and into the keeping of the United States Marshal of the Territory in conformity to the instructions, rules and regulations of the Attorney General of the United States; and here I will refer the Court to the fact that the Marshal had instructions to take possession of this prison as the property of the United States; and, according to the evidence, that he had

possession of it sometime in August. He is further instructed to make arrangements, if any are necessary, with the Governor, or proper authorities of the Territory, to take and keep the prisoners belonging to the Territory in that prison, under an agreement entered into between the government, or United States authorities, the Attorney General acting in this capacity as the rightful agent of the government. An agreement is made between these two parties and that agreement is ratified on the part of the government. Now the question is, where is this authority lodged for giving over to the Marshal of the United States for this Territory the custody of these prisoners? There is nothing in the statute that defines where it is lodged. The statute simply gives to the Warden the control of the prisoners and provides what his duties shall be. Nothing is said in the law with reference to this change. Nothing of the kind was anticipated by the legislature. But there is a change, created by the superior power of the United States Government. And it will not be contended, I apprehend, that the inferior power can control the superior; but whenever a law is passed by Congress conflicting with the law of a Territory, the law of a Territory at once gives way and the law of Congress is immediately in force. So, then, this law being in force, the Governor, who is the executive officer of the Territory, who a business it is to see that the laws are properly administered, has the right to deal with the government of the United States in the absence of any express law. The Warden could not have the power, for his duties are strictly defined by law; and among his powers are none such as the one we have referred to. Certainly it cannot be the directors of the prison who have the power to do it. Where is this power lodged if not in the Governor? He is the only person that can contract with the government of the United States, and it is his duty to do it. We find the Marshal in possession of the prison by direction of the United States government, and he contracts with the Governor to keep Territorial convicts there, in what manner they are to be kept, and at what expense to the Territory; and we find that the Governor is the only officer who has the power to make this contract and enforce the law. What shall the Marshal do? He has authority to act, not coming from the inferior but directly from the superior power. There is a law here, your honor, that I will read, showing that if he did not do certain things what the penalty would be. (Counsel read from Act of Congress June 21, 1860, vol. 12, page 69.) That is for an offence of omission as well as commission. It will be said that he had no right in his position to act as he did. Let us see. When an officer is required to do a certain thing, and an order of court has once gone out which has been delivered to him or to his predecessor, it matters not whether that order be lost or in the hands of any third person, it must be executed for its vitality and power continue. I believe the gentlemen will not controvert that position. Now, here is a Marshal in the possession of a prison; here has been a warrant of commitment which is before your honor; that warrant of commitment was in the hands of a party who perhaps was properly there, at any rate he was there, exercising the power and functions of an officer, now if the law supersedes that person, conferring upon another man the powers with which he was clothed, that man must perform the duties of the office thus conferred upon him. He is clothed with the power and authority of the other and must exercise them, or he is amenable to the law for any omission he is guilty of. We find this man, Mr. Rockwood, claiming to have been the Warden of the prison, and we come to a point where there is a conflict between the powers of the Territorial officers and the powers of the Government officers. The former claim that by virtue of the powers conferred by the Legislature they are properly in possession of the prison and the prisoners. If they misapprehend the law, and offend against the law, it is no excuse. The law presumes that every man shall understand it; and if they take a position in conflict with the law and violate it, whatever their intention may be it is none the less a crime; and all people should understand that whenever there is a criminal statute, ignorance of that statute is no defense. Nevertheless, there can be no question as to the intent in the case. There is no excuse set up on the part of the defendants' counsel that they have acted ignorantly or unintentionally.