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THE CONSPIRACY FOR TWO **OFFICES**

IT is not surprising that Judge Zane the Tribune would have glorified has decided that the Territorial Audithem as "manly, independent and tor and Treasurer are illegally holding courageous," and all the youth of the offices in which they have served "Mormondom" would have been the public interest so faithfully. When called upon to emulate their "noble District Attorney Dickson started in example." But to decline to sign a to accomplish through the courts what document endorsed by the Tribune is and Governor Murray failed to effect by arrant rebellion. What business have proclamation, it was expected that they to act on their own volition? The Judge Zane would once more dance to idea of their imagining that they are at his music. liberty to sign or not to sign just as

The law; of 1852 and the law of 1878, they choose! Tribune liberty is freeso far as they relate to the dom to do as the Tribune blackguards election of the Auditor and Treasdictate. And woe be to the official, or urer, are declared by the Court employe of an official, who dares to invalid. The former law created kick against their mandates. the offices and also provided for That abusive and dictatorial

the manner of filling them, namely, by and slave-driving article should election by the joint vote of the two be sent to both Houses of Houses of the Legislative Assembly. Congress attached to the memorial, The court rules that the portion of the that members may see how signatures law which created the offices is valid, are forced, and how much freedom of but that part which provides for the opinion and action may be expected manner of filling them is invalid, being under the rule of the minority who in conflict with section seven of the want the majority disfranchised under Organic Act. Also that the law of 1878, the false plea that they do not vote which provides that those offices from choice.

should be filled by election by the peo-There are not a more abject set of ple, is invalid for the same reason. political slaves under the sun, than This is done with the view of ousting many of the non-"Mormons" who fret the present incumbents from the ofunder the lash of the Tribunc, and no fices, to make way for the Governor's more despotic and tyrannical masters bogus appointees. than the clique which is now plotting

It remains to be seen whether under the Tribune lead to subjugate the scheme which was concocted this entire Territory. The abusive before the Legislature adjourned, will article to which we allude is a fair be carried to its full purpose. It does sample of the "liberty" which they not follow, even if the present incum- | want to introduce into Utah.

bents are not officers de jure, that the Governor's appointees are entitled to their places. He tried to force them upon the Territory without authority ia law, and the effort cost him his official head. Now the work of thrusting them upon an unwilling peo-

ple is being undertaken through the courts. We will wait and see the issue.

But whatever decisions may be arrived at, the people will expect those whom they have elected by their votes to the important positions which they occupy, to avail themselves of every legal power within their reach, to contest every ruling which would deprive them of their offices and defeat the will of the people. Let the position be defended and every point be legally fought, to the very last notch and to the last court to which the case

Treasurer, to vacate their offices: can be appealed. This case of the People of the Terri-The foregoing was crowded out of Wednesday's Evening News. It will be seen from the rulings of the Court, to be found in another part of this paper, that the Governor's appointees are recognized by the Court. An appeal will be taken to the Supreme Court of the Territory, but the conclusion is foregone. Judge Zane sits on the appeal from his own decision and only needs the acquiescence of one more Judge to settle the case in the Supreme Court. it has been stated emphatically that there can be no appeal to the Supreme Court of the United States. But it will not do to be too sure of that. Lawyers and newspapers have been mistaken on similar points before, and they may be again. The question is of sufficient importance to this whole Territory to be fully tested, and a similar decision in reference to the offices of Attorney General and Territorial Marshal from the Utah Courts was reversed in the court of last resort. There are two sides to this question and the side of the election of Auditor and Treasurer by popular vote is the side of justice, right and that principle of giving to the people every power that is consistent with republican principles without destroying the powers of the General Goverument, which the Supreme Court of the United States has declared to be the policy of this nation. There is a point in the controversy that should be duly considered. It is airly set aside by Judge Zane, but it is pertinent to the issue. If the provision which makes the offices of Auditor and Treasurer elective is set aside as invalid, then the offices are nonexistent. There is no separate section or clause in the law of 1852 creating the offices and another providing how they shall be filled. The law thus commences after the enacting clause: "That a Treasurer and Auditor of Public Accounts shall be elected by the joint vote of both Houses of the Legislative Assembly," etc. Strike that out and there is nothing left creative of the offices. They do not exist. They could only come into being in the act of the election of the officers. Under the ruling of Judge Zane, those offices have never been legally filled, there has always been a vacancy, but follows: the wording of the law shows to the contrary. The closing section of the law too relates to the filling of vacancies occurring in relation to elective offices, and the intent of the Legislature, to which the Judge refers, was clearly to have the offices filled by election as provided, and also to have vacancies occurring in offices thus filled by election supplied by executive appointment. The first section and the last go together and stand or fall together. go together and stand or fall together. If the Organic Act is to govern, then the Governor can only make appoint-ments by and with the advice and con-sent of the Legislative Council, and in case of the death or resignation of officers so appointed. These provisions do not meet the case of the appoint-ments by proclamation for the Connecil ments by proclamation, for the Council did not confirm, and the incumbents are not dead, neither have they re-signed. The controversy is not yet ended, and a full and thorough test ought to be had of the question. For the suit

of Public Accounts of the Territory of Utah; and further, it states that "since that time he has, and does still, hold and exercise the functions of said office, without authority of law there-for." In many criminal proceedings it is held that the offense is sufficiently described if, with the addition of dates and names and venue, the indictment follows as in the terms of the statute, where it is a statutory offense and the The trio of independents are each treated to a bucketful of Tribune slop, and the ,ides is advanced that all recipients of Uncle Sam's money in payment for services rendered, are expected to join in every appeal "asking aid from Congress in behalf of the Gentiles." And the action of those where it is a statutory offense and the offense is described in the statute. three young men, as the only ones in the Post Office who would not sign the

petition, is denounced as "a case so flagrant" that it must be brought into Tribune "prominence." This is the organ of the "free and independent Liberals," who want to knock off the so-called "shackles of Mormonism." If these three young men had

therefor." It would have been more specific if the party had stated "without appointment," assuming the plaintiff, in view of the law, to be correfused to sign a "Mormon" memorial. rect, or "without due appointment." But there is only one way, according to the view of the law which the plaintiff takes, if he is correct in it, by which the party could have lawfully come into the office, and would be by nomination confirmation by the Terthat ritorial Council, as the party came in, according to the allegation here, in the year 1879, and it is alleged that that was wrongful and that he wrongfully continues to hold still in the office by virtue of that wrongful usurpation.

tice,

the burden is upon the defendant, both of allegation and of proof, to show his right, where his right to the office is challenged by the people, it is not necessary to show, to point out This, in the light of the California de-cisions, without referring to them, I am disposed to hold as sufficient, and I am disposed to hold that it is sufficient on principle in a case of this character. If the respondent holds the appoint-ment it is something that he has in his possession, and it is not, therefore necessary to state with any degree of particularity and describe that ap-pointment, because, it being in his possession, it is sufficient to deny his

legal right and to challenge his right in that way; and then it is his/duty to justify and show his anthority. There are other allegations in this complaint, but they relate to the plain-tiff Pratt. These, under the authorities, I am disposed to hold are not now in

ments are as follows: "Further answering the complaint of said plaintiff and for a separate answer thereto, defendant alleges that on the 1st day of August, 1880, he was a citizen of the United States, over the age of 21 years, and he was then and there and at all times since has been and now is eligible under the laws to hold office in

Utah Territory. "That an election by the people of Utah Territory was held on the second Monday in August, 1880; that at said time said defendant was the incumbent they may afterwards ratify it. But in this case the Territorial Legis-lature had not the authority originally. This is not like the case, precisely, where a legislative body passes a law in said office, having been elected to said office, having been elected to said office theretofore. That on said last named date defendant was again elected by the people of said Territory to be Auditor of Public Accounts for the Territory of Utah." And alleges further that afterwards, in September, 1880, the Governor of the Territory, under his hand and seal, issued to the defendant a commission as said auditor, which was also signed by the Secretary of said Territory. These are the allegations, so far as the tis necessary to state them. His right, therefore, depends upon the election which he alleges occurred on the 1st day of August, 1880, so far as there is any issue made in the objection; and if that a election was walld theat the objection; and if in said office, having been elected to said office theretofore. That on said last named date defendant was again day of August, 1880, so far as there is any issue made in the objection; and if

That is the first clause of the sec-tion, and it relates to township, dis-trict and county officers. The next

clause is: "The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided

for." That clause seems to be clear and plain, as the former one is. It is a statement in plain language that "the Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for." The first clause does not provide for the appointment or election of Terri-torial officers; and hence by that pro-vision they are not provided for. It is insisted that the last clause of the sec-tion renders the meaning doubtful as It is insisted that this is a statement of conclusions and not of facts, and the principal objection is to the con-cluding portion of the complaint, which sets up the wrong complained of. The complaint is: "hold and ex-ercise the functions of said ofwithout authority of law tion renders the meaning doubtful as to the mode in which the Territorial officers shall be selected. That clause

"And in the first instance the Governor alone may appoint all said olli-cers, who shall hold their offices until the end of the first session of the Leg-islative Assembly, and shall lay off the necessary districts for members of the Council and House of Representatives

Council and House of Representatives and all other officers." That relates to the appointment in the first instance, before the Territo-rial government, through the Legisla-ture, has provided the mode of their selection. Still, there might be some difficulty in conceiving, and there would be room for controversy, as to the precise condition to which this last clause is applicable. It certainly can-not apply to the appointment or elec-tion of any such officers, except those who are appointed in the first instance In complaints of this character, when with great particularity the acts which constitute the wrongful usurpation or the wrongful holding of the office. This, in the light of the California de-islative Assembly. I am unable to see the end of the first session of the Leg-islative Assembly. I am unable to see I that that renders the two first clauses of this section ambiguous or of doubtful signification. As to those two clauses I can see no room for construction. It is a mere matter of int erpretation, and the lan-guage is plain. Taking these two sec-tions, then, together, it would seem that the action of the Territorial Legis-lature in passing this law was without authority. It did not extend to this subject—that is, the subject of appoint-ing a Territorial Auditor, because that, by the seventh section, is given to the Governor, by and with the advice and consent of the Legislative Council. It is insisted that this Territorial statute has been acquiesced in by Conegal right and to challenge his 1 ight

statute has been acquiesced in by Con-gress, and I believe it was also in-sisted that the Territorial Legislature had acquiesced in it and therefore had ratified it. If the Territorial Legisla-The question therefore arises: "Is the respondent justified—do the facts stated in his answer show that he has a legal title to his office? His stateratified it. If the Territorial Legisla-ture had not the authority to pass the law, in the first instance, it had no au-thority to ratify it subsequently. A legislative body may ratify an act which they have done, without authori-ty, when they had the authority to do the act originally. When a legislative body has authority to pass a law, if in consequence of some defect in their proceedings and in their action, the law is invaded, they may afterwards ratify it.

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One blue roan MARE, supposed to be 12 years old, branded I on left thigh and left shoulder, also J- on left thigh. One dark bay MARE, one year old; no brands visible. One dark bay MARE, one year old; no brands visible. If the above described animals are not claimed in ten days from date, they will be sold to the highest cash bidder at Draper destrict estray pound, at 4 o'clock p. m. Traneday, April 29th, 1886. H. A. SMITH, District Poundkeeper. Draper, April 19, 1886.

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H. S ELDREDGE, Supt.



IMMENSE - ARRIVALS!

ory of Utah, on the relation of Wm. H. Dickson, United States District Attorney for said Territory, plaintiff vs. Nephi W. Clayton, defendant. This is a proceeding under Chapter , page 282, of the statutes of 1884. The

irst section of the statute describe he causes or the wrongs for which this chapter furnishes the remedy. Section 691 is as follows: "An action may be brought in the name of the people of this Territory against any person who usurps, in trudes into, holds or exercises any of ice or franchise, real or pretende

A MONSTROUS STEAL AT-

TEMPTED.

Judge Zane's Decision to Remove

People Elected.

from Office Those Whom the

The Revolutionary Move to Place

all Territorial Officers in the

Hands of the Bule-or-Ruin Clique,

Following is the full text of Judge

Zane's ruling, delivered in the Third

District Court this morning, declaring

the acts of the Legislature making

elective territorial officers, invalid, and

ordering' the present incumbents,

Nephi W. Clayton, Auditor of Public

Accounts, and James Jack, Territorial

within this Territory, without authority of law. Such action shall be brough by the prosecuting attorney of the proper county, when the office or franchise relates to a county, precinct or city, and when such office or franchise relates to the Territory, by the United States district attorney; and it shall be the duty of the proper officer, upon proper showing, to bring such action whenever he has reason to believe that any such office or franchise has been usurped intruded into, held or exercised with-out authority of law."

This statute has changed the form of pleading with respect to rights and wrongs for which a writ of quo war-ranto was formerly the remedy: but the change is held by weight of authority as simply as to the form, not as to the substance. The position of the par-ties, and the rules of evidence, and the presumption of law, remain the same as before this statute went into force or into effect. The statute here in this Cerritory is the same, substantially, as hose in New York, California and other States. In the case of The Peo-ple, on the relation of Judson-Thatcher, in the 55 New York, page 525, the Court says, after discussing

lection.

the remedy: "The forms of procedure have been changed, but the position of the de-fendant, and the rules of evidence, and the presumptions of law and fact are the same as in the proceeding by writ or information, for which the remedy by action was substituted. The people are here the ultimate source of the right to hold a public office; and now, as heretofore, when the right of a person exercising an office is challenged in a direct proceeding by the Attorney-General, the defendant must establish his title, or judgment will be rendered against him. It results from these considerations that the defendant, in order to have judgment in his favor,

was required to prove that he was elected to the office of mayor at the election held in April, 1872. The pos-session of the office was not in this ac-tion evidence of his right." So that the position of the parties, and the rules of evidence, and the presumptions of law, remain the same as they were when the writ of quo warranto was enforced, or where it is now enforced. Section 713 of "High on Extraordinary Legal Remedied" is as "As regards the question of intru-

sion into or usurpation of the office, to test which an information is filed, it is regarded as sufficient to allege, generally, that the respondent is in possession of the office without lawful au-thority. And in case the pleadings are defective in this respect, the defect is one which should be taken advantage of by special domurar?

of by special demurrer.' SECTION 716-"When the proceeding are instituted for the purpose of test-ing the title to an office, the proper course for a respondent is either to disclaim or to justify. If he disclaims all right to the office, the people are at once entitled to judgment as of course.

the Territory, to report these laws to Congress-all acts of the Territorial that election was valid then the commission was valid; if the election was Legislature-and Congress may disinvalid, then the commission was without authority. The election was held under the provisions of chap. 11, of the statutes of 1878, commencing on approve of them. But the approval of

approve of them. But the approval of Congress is not essential to the validi-ty of the law, nor does the invalidity of the law depend upon the disap-proval of Congress. I am of the opinion that this act of the Territorial Legislature is invalid, without authority, and contrary to the seventh section. A similar section has been adopted in the general law appli-cable to Territories, and the Territori-al Legislature of Idaho passed an act. contrary to that provision, and the Supreme Court of that Territorial Legisla ture was without authority. In sub-stance it is the same question as here made. Reference has also been made to the Englebrecht case and the Snow case. I do not understand that the question there was raised as to whether of the statutes of 1878, commencing on page 27. The latter clause of section 4 of that chapter provides: "The Territorial Treasurer and Auditor of Public Accounts shall be hereafter elected by the qualified voters at the general election in August, 1878, and biennially thereafter, and the pre-sent incumbents shall hold their respective offices and perform the duties of the same until the next general election, and until their successors shall be elected and qualified," This law was approved, February 22, 1878, two years, I believe, before the election occurred at which the respondent claims to have been elected. This chapter should also probably be considered with chapter 1 of the stat-utes of the Compiled Laws of Utah, 1876. The first section of that statute

case. I do not understand that the question there was raised as to whether one department of the Territorial Legislature should appoint the offi-cers, or another; or as to whether the officer should be elected by the people. The laws in question there seem to have been, in the estimation of the Supreme Court, of doubtful significa-tion, and in determining the question, they looked at the long acquiescence of Congress in construing the law, and considered it in the light of that ac-quiescence and approval. But I do not understand that where the law is plain a long aquiescence will ratify an act 1876. The first section of that statute provides: "That a Treasurer and Auditor of Public Accounts shall be elected by the joint vote of both houses of the Leg-islative Assembly, whose term of office shall be four years and until their suc-cessors are elected and qualified, un-less sooner superseded by legislative election." election." It seems that this provides for the election by the joint vote of both of the bouses of the Legislative Assembly. In this chapter there are a number of sec-tions and provisions which it is not necessary to read relating to this office, and the office is described by mention-ing the functions that pertain to it—by mentioning the authority which the of-ficer may exercise, and his qualifica-tion. Section 2 provides for the giving of bonds and taking the oath of office; Section 5, for the giving of bonds and

understand that where the law is plain a long aquiescence will ratify an act of the Territorial Legislature contrary to that law and the law of Congress. There were a number of other ques-tions raised and discussed in the hear-ing of this motion, but I am of the opinion that none of them are well founded, and that this justification shows no right in the respondent to held this office. It is clearly in viola-tion of the Organic Act. That being so, the demurrer to the complaint is over-ruled and the motion for judgment is allowed. I suppose in both of these cases the same question arises, there-fore the same order and motion will be allowed in each. of bonds and taking the oath of office; Section 5, for the giving of bonds and taking the oath of office again; Section 6 refers to the duty of the Auditor, and Section 8 relates to the filling of yacan-cies, and there are a number of other provisions which relate to this office. It is insisted that if this law is in-valid, then there are no such offices as llowed in each.

valid, then there are no such offices as the offices of Auditor and Treasurer; -The Knights of Labor hall, in Lar-amie, Wyoming, took fire on Tuesday last, but the fiames were extinguished before much damage was done. that it is impossible to hold that the portion of the statute which relates to the officer and establishes the office can

exist without the provisions relating to his election. This statute had in view -A young man named Persons, of Georgetown, Idaho, in attempting to go from that place to Marsh Valley, across the mountains, on snow, shoes last week, was overtaken by night, compelled to lie out all night, had both feet frozen and has since died from the effects of the cold. two purposes: One was the establish ment of the office or offices mentioned and the other was the mode of selectin

and the other was the mode of selecting the officer, and the description of the functions and duties of the officer. The rule is, where a provision of a statute consists of several provisions essential to the purpose, and one of these pro-visions is invalid, all of the provisions fail because it is to be presumed that the Legislature intended all to stand together, and it would be impossible to carry into effectithe statute's pur-pose without the benefit of all the pro-visions relating to that purpose. The office of Auditor is one thing and the effects of the cold. —A courier to Fort Bowie, Arizona, on April 9, brings the following from Capt. Dorst's command, which is pur-suing the Apache hostiles that have crossed the Mexican border: "Yester-day, by a night march, Dorst reached the mouth of San Bernardino river, then marching down the Baylspe river he reached a point & miles above Opni. On the 9th the march was retarded by the difficult character of the country and the fact that it was unknown ito the scouts, no command having ever before passed over it. It was im-possible to find a practicable route for the pack trains over the mountains to the right until the 10th. Dorst learns that the hostiles started through Los Milores mountains, but apparently dis-covering pursuit, turned northward to the frontier, and then crossing the val-ley west ward into theOafion mountains at Fronteras they stole between 50 and 60 harses. The indications are that the whole band has gone into the Can-nancas." pose without the benefit of all the pro-visions relating to that purpose. The office of Auditor is one thing and the officer is another. The office in the legal sense, and as I believe it was once stated by Chief Justice Mar-shal, is immortal—that is to say it don't depend upon the life of any it d was once stated by Chief Justice Mar-shal, is immortal—that is to say it don't depend upon the life of any indi-vidual; it continues while the officers come and go; and the office is one thing and the officer another. The office may be established without providing for the mode of filling it. The office may be created and it may be filled by elec-tion, by the Legislative Assembly, or by the people of the Territory, or by appointment of the Governor, if the law so provides, or by appointment of the Governor by and with the advice and consent of the Council or Assem-by. I am disposed to hold that these provisions, these purposes, are so sep-arate and distinct that the law may be held invalid, so far as it relates to the mode of filling the office and the selec-tion of the officer, and remain valid so far as it establishes the office. The Legislature unquestionably so under-stood it, because they refer to these respective offices in the statutes of 1878, and they change the mode of fill-ing the office. Instead of the office be-ing filled as it was before, they provide that the Treasurer and Auditor shall be elected by qualified voters at the general election of August, 1878, and bleminally thereafter. The question, therefore, comes at last, and it is the question in this case, ancas."

DEATHS.

BOARDMAN-At Provo City, Utah Co. April 16th, 1886, Mary, wife of Robert M manhan She was born Dec. 21, 1816, at Gosbe Lincolnshire, England, baptized June 14 1840. by Rider William Smith, she moved to

Derbyshire in 1854; emigrated to Utah in 1866; crossed the plains in Captain White's train, settled in Provo where she resided intil her demise. She was a devoted wife nd mother and died as she had lived, full

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Salt Lake City, U. T., April 10th, 1886.

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NOTICE! O, THE WOOL GROWERS OF UTAH, COLORADO, WYOMING, **IDAHO AND NEVADA.**

THE WOOL GROWERS OF UTAH, through the officers of the Wool Grow-ers' Association, respectfully request your sitendance at a Mass Convention of all perattendance at a Mass Convention of all per-sons directly interested in this great in-dustry, to be held in this City on Monday, May 3rd at 18 o'clock a, m., and that all as-sociations of Wool Growers in your respect-ive States and Territorics send delegates to the same, for the purpose of entering-such protest and taking such action in the matter of the proposed reduction of the tariff on Wool as shall seem wise and most effective.

fective. President Utah Wool Growers' Associat

R. L. HOWARD, Socretary. d9 s2 w1

ESTRAY NOTICE. HAVE IN MY POSSESSION:

One groy flos-hitten HORSE, 4 or 6 years old; no brands fusible. If the above described animal is not claimed and taken away on or before the lat day of May, 1886, will be sold to the high-est responsible bidder, at the Scipio Dis-trict Pound at 9 o'clock a.m. MENRY THOMPSON, Poundkeeper.

ESTRAY NOTICE.

Scipio, Millard Co., April 19, 1886,

ESTRAY NOTICE. HAVE IN MY POSSESSION:

One bay horse COLT, 9 years old, white strip on nose; no mark or brand visible. If not claimed within ten days from date, will be sold to the highest bidder at 1 p. m. on Friday, April 30th, 1886, at my corral, Grantsville, Tooele County, Ulah. WILLIAM MATTHEWS, District Poundbeener.

Grantsville, April 20, 1886. HAVE IN MY POSSESSION: One dark brown HORSE, 4 years old, three white feet, hind feet above fellock white, star in forchead, white spot on end of nose,

