

Correspondence.

LETTER IV.

It is therefore proper to say that while the case at bar is called "The People versus Brigham Young," its other and real title is "FEDERAL AUTHORITY versus POLYGAMIC THEOCRACY."—Opinion of Chief Justice J. B. McKean.

The Territorial Question.

Mr. Editor, Dear Sir.—In my last I intimated that I would examine the Territorial question. Owing to the peculiar position that we have occupied and do still occupy, this is becoming a grave question for statesmen and political savants. The North Western Territory; the Florida purchase; the acquisition of Texas; the conquest, purchase and annexation of California and Alaska and our extensive domain in the far north-west; our present relations with Mexico and other powers; together with the fast settling up of the country; the great increase of population; the vast influx of heterogeneous immigration, composed of European, Mongolian and other races; and the continuous addition of new States and Territories, place us in a position different entirely from any other nation that ever existed. Possessing, also, a republican form of government and a written Constitution which binds us to "guarantee to every State in the Union a republican form of government, and to protect them against invasion and domestic violence," all of these render it very important that we look well to our political landmarks. And as a vast empire is with gigantic strides surging, growing, increasing, spreading and expanding, and as we are legislating on first principles and forming precedents for unborn millions that may tread in our footsteps, it is well for us to "ponder well the path of our feet," and be careful that we introduce no principles, advocate no system, establish no precedent or antecedent that is unquestionable, unequal, unjust or oppressive, or that will tend to dissolution or decay, and that we guard, jealously and safely, our political rights and immunities.

It has been the opinion of many statesmen, and is a favorite dogma of monarchists, that

Democracy or Republicanism

is only adapted for small communities. In the first they are of course correct; but in a republican representative government the statement is a fallacy.

It is further urged that peoples are not capable of self-government. I might here ask who, then, are? Are kings, emperors, autocrats, presidents, judges and others more competent? History does not so instruct us. Who are these magnates? Are they not people? Is their intelligence more profound? Are their principles more correct? Their lives more virtuous? Their blood more pure than other people's? Let history answer. We are told, however, that "eternal vigilance is the price of liberty;" and as we possess the best constitution, and the best government in the world, let us preserve it, and transmit it intact, pure and unadulterated to our children.

A Territorial government is a very peculiar organization; and although there are many good traits in it, and few that are bad, if not perverted, yet it is so strange and anomalous as to appear like a fungus or excrescence on our body politic, and as it is monarchical, and not republican in form, it presents the anomalous position of monarchical rule in a republican government; as his honor our Chief Justice has it, an "Imperium in imperio." It is with very great delicacy that I would question the acts of our legislators and statesmen. I look upon them as leading, representative men of the greatest nation on the earth; yet withal they are but men, and in the heat of debate, under partisan influences, with a strict and honest regard to their Constitutional amenities; and with the best and purest intentions, policy, political necessities, conflicting interests and a desire to promote the public weal, they sometimes make grave mistakes. I think that the organization of Territories is one of these, which I now proceed to examine, and will state that as there is no Constitutional authority for such an organization, it is simply an unauthorized jurisdiction; for the Constitution is as binding upon Congress as upon the people, and anything not authorized in that instrument is assumed. Congress has indeed the power to admit new States into the Union—Art. IV, Sec. 3-4,—and to "guarantee to such States a republican form of government," but nowhere does it possess the Constitutional power to organize Territorial governments. It possesses legislative power in and over the District of Columbia, and over the forts, arsenals, dock yards, and magazines—Sec. VIII—and has power to dispose of and make all needful rules and regulations respecting the "territory and other property of the United States;" but not to legislate for the inhabitants of Territories, who are not property. No statesman in the advocacy of the right of Congress to organize Territorial government would hide himself behind so flimsy and transparent a bulwark as the Territorial property clause; such an

aburd idea could only be introduced by incompetent neophytes, or political hucksters.

The Territorial Question.

Is a subject that has caused Congress considerable trouble, ever since their first organization. It is true that Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi and other States, were easily arranged and mostly passed as States into the Union without Territorial tutelage; but as party lines began to be more clearly defined, and the slavery question pushed itself into greater prominence before the nation, a jealousy sprang up between the North and the South in regard to the acquisition of new States, each party being desirous of maintaining their own specific status, and neither party being willing to admit a Southern or Northern State without a corresponding equivalent, so as to preserve a balance of power between the two contestants, irrespective, in many instances, of the rights of the people in the Territories.

The Case of Michigan.

Michigan is a striking instance of this fact. Constituted a Territory in 1805, she was kept out of the Union until 1837, waiting for a twin or duplicate from the South, until wearied by procrastination and tired of waiting on the slow progress of Southern increase, and goaded by federal appointees, she burst her swaddling bands, fell back on her reserved rights, proclaimed her sovereignty, framed a State constitution, organized a State government, sent her senators and representatives to Congress and demanded admission; and although the proceedings were somewhat informal, peccant and brusque, she was received into the Union.

It must be admitted, however, that as the United States form one great contracting party, they ought not and cannot be forced into the reception of States without their consent; yet on the other hand they have no authority to form Territorial governments, nor any other than State governments, and hence one wrong produced another, as there is no provision in the constitution authorizing the organization of Territorial governments, as they had organized a government, interfering with popular sovereignty, they ought either to have received them, or let the people govern themselves, until they were prepared to receive them—either let them alone or give them a republican form of government. Arkansas, being her twin Southern sister, was also admitted at the same time. Texas next entered the arena, but being already a nation, needed no preliminary arrangements.

Application for Deseret to Unite with California.

During Mr. Taylor's administration parties began to define their attitude, and the Territorial question threatening to be fierce, California, Deseret and New Mexico all being expected to apply for admission, the president wishing to remove the vexed question from Congress, sent two delegates, one to Utah the other to California. General Wilson as the delegate to Utah came here in 1849, with a request for us to unite with California and to form a State, that the Territorial question then agitating the nation might be removed from Congress. I was one of a committee who communicated with him on that subject, being interested on this question. He informed us that if we felt unwilling to form this union, he was requested by the president to appeal to our patriotism to aid him in avoiding apprehended difficulties. We acceded to his request and agreed to form this union, on the condition that we were each, within two years to form a separate State constitution and government. The other delegate was sent by water to California for the same purpose. General Wilson left late in the fall, with a part of his family and an escort. He was detained for a length of time by a severe snow storm, which prevented his arrival in California at the time specified. The other delegate, not being able to wait for him, made other arrangements with the people of California, and his mission was thus frustrated; had it not been for a snow storm, we should have been a free people; as it is, we have been living under the worst species of despotism—a satrapy—from that time to the present. Does freedom depend upon such adventitious circumstances? Are the liberties of men depending upon such contingencies? Is this the popular republican government guaranteed by the Constitution of the United States?

Popular Sovereignty.

Mr. Douglas' compromise measures, that so agitated the country, were based really on the popular sovereignty of the people, mixed up with other matters, foreign indeed from the subject, but consider necessitated by former compacts and agreements entered into by the antagonistic parties north and south. This doctrine assumed the right of the people, in the Territories and everywhere, to manage their own municipal, social and domestic matters, that it was the people and not the land that made the Territory; and that being governed by this instinctive, inalienable right; it was for each individual Territory or people to say whether they would have slavery or anything else within the proscribed limits of the Constitution or not. Any deviation from this principle was not considered by the popular sovereignty party a question

of right, but a question of compromise. This measure of course destroyed the Missouri compromise. Nor was Mr. Douglas alone on this question. Senator Cass said: "There are two points I always have maintained with reference to this subject; first, that Congress, under the Constitution, has no right to establish governments for the Territories; secondly, that under no circumstances have they the right to pass any law to regulate the internal affairs of the people inhabiting them." American Statesman, page 935. And when questioned on the subject, said further: "I maintain that no power is given by the constitution to establish Territorial governments; but that where an imperious necessity exists for such a measure, the legislature who yields to it, must look to his constituents for his justification." Ibid, page 936. Governor Walker, of Kansas, in a State paper declares that popular sovereignty is a power that cannot be delegated; but rests exclusively with the people. Mr. Calhoun is also very definite on this point, and says: "The clause of the constitution which gives power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States, did not convey such a right, it conferred no governmental power whatever, no, not a particle." Such then is the opinion of some of our most prominent statesmen. We find the following from Mr. Butler, in speaking of the national domain: "But we hold no arbitrary authority over it; we hold no arbitrary authority over anything, whether acquired lawfully, or seized by usurpation. The constitution regulates our stewardship; the constitution devotes the domain to union, to justice, to defense, to welfare, and to liberty."

Territorial Governments not Constitutional.

From the above it is evident that the Constitution nowhere authorizes the formation of Territorial governments, that their power to organize and legislate for Territories does not exist in that instrument, and that this is also the opinion of some of our most prominent statesmen. It is very plain that the power granted to Congress to legislate for the District of Columbia, and to regulate matters in arsenals, dock yards and public grounds, does not convey this right, nor can the power given over the territory or other property of the United States, be so construed as to refer to governmental or local legislation, or to the government of the people in the Territories.

Congress is the representative or trustee of the nation, and is limited and bound by that great instrument of trust—the Constitution. Should trustees in their fiduciary capacity violate their trust in an estate or property they would be held responsible for such act to the courts at law, and their departure from or violation of their deed, articles or instrument of trust, would be adjudged a sufficient cause for their condemnation. A departure from an agreement in private life gives an immediate cause for action. Are the liberties of men and nations less important than dollars and cents? Associated with so great a nation, at present and prospective, as that of the United States, they assume very grave proportions and demand the most careful enquiry from the guardians of the public interest.

Expedients and Compromises

Are always good when confined within proper limits and constitutional bounds, but when they exceed this a violation of faith and a breach of contract exists, and the most serious and pernicious consequences are the result. Owing to compromises of this nature, the enunciation of the "popular sovereignty doctrine," by Mr. Douglas, which in itself was correct, tore up and scattered unconstitutional compromises, disjointed the whole structure of political ethics, and disrupted and cut assunder former usages and bounds; but after bursting like a thunderbolt on the astounded parties, tended to clear by its electric force the political horizon. It is true it was only a partial measure, and only touched one of the many abuses and was soon lost in the seething, bubbling caldron of political partisanship. If Mr. Douglass, the then chairman of the committee on Territories, had candidly and efficiently pursued this subject to its legitimate conclusions, and embraced in his programme Territorial and other fundamental doctrinal abuses, he would have stood foremost as the champion of human rights, conferred an incalculable benefit on unborn generations, purged the body politic from these unnatural excrescences, and been immortalized by the nation. Instead of which he became inflated with popularity, lost his equilibrium, bedizened with power and position, he talked flippantly, grandiloquently, menacingly, about cutting out loathsome ulcers, lost himself in the fogs of party and died unhonored and unlamented.

But to return: I propose now to show that the organization of Territorial governments is in

Violation of the People's Rights.

Subversive of liberty, and pernicious in their results. The American government is based on the will of the people; is democratic in principle and republican in form. As has before been stated, the people formed the constitution, they empower the President and legislators and are

represented by numbers and property. A Territorial government is framed by Congress; its governor, secretary, marshal and judiciary are the appointees of the President and Senate, without the consent and in many instances in direct opposition to the will of the people, and they are invested with powers subversive alike of liberty, equal rights and constitutional guarantees. A Territorial government is a relic of monarchy and is simply a satrapy. In a republican State government, which Congress is authorized to establish, the people elect their own governors, state officers, judiciary, and control all their internal affairs. In the government of a Territory it is quite the reverse; neither the governor, secretary, marshal, attorney or judge is appointed by the people, and they have no more to do with their selection or appointment than the inhabitants of Timbuctoo.

How it Works in Utah.

They have, it is true, a local legislature, but in Utah and some other Territories this is simply a farce. The governor, with or without cause, can veto all they do, and thus the will or vote of one hundred thousand inhabitants, represented by a legislature, amounts to nothing, while one man, a stranger, having no sympathies with the people, can annul all that one hundred thousand have done. But should he not veto a bill, Congress can do so, which is certainly very much more safe than this one-man power, but is not republican nor democratic. Further, should it escape both of these tests, it is still liable to be disturbed by the judiciary, who, with some kind of authority, certainly not that of the people, reject our laws at pleasure, take a part of one and reject the other part, or take all or reject all at will. The people are entirely ignored in the whole operation, just as much as the serfs of Russia, or the slaves of the South previous to their freedom. To-day they are both infinitely better off than we are, in personal rights. It is true we have an Organic Act, and a form of government which ought to be held sacred; but that makes no difference, they are simply bubbles, playthings for children, to be given and taken at pleasure, just as mamma says, like little boys who don't play marbles "for keeps." Our laws are ignored, our Territorial officers are ignored, our courts are ignored, and then our juries are worse than a farce. Out of one hundred thousand Mormons in this Territory, not one found his way on the jury of the 3rd judicial district, neither grand nor traverse; that, however, may be accounted for on the assertion of his honor, the chief justice, who, it is evident, did not come here to administer justice according to law, but, as he very gravely informed us, to make war on a "system in the person of Brigham Young." Such is our Territorial government. It only remains to ask, is this what we have bargained for? Is this the freedom that the declarers of independence and the framers of the constitution contemplated? Is this a democratic government, republican in form? Is this the glorious boon we offer to Cuba, San Domingo, Canada and the world? But you have a delegate in Congress; true, but what is he? A figurehead, to be looked at; a dummy, to sit and listen and speak on certain particular occasions, but not to vote. In fact Territories have no rights; they obtain frequently a large amount of justice, but this is simply courtesy, concession, favor received; and arises more from the justice of individuals, and the prevalence of democratic ideas than from national justice or inherent inalienable rights.

The Rights of Citizens in Territories.

His honor, chief justice McKean, in his naturalization programme, informed an applicant, a short time ago, that he was now admitted to all the rights of an American citizen, he could hold any office under the government except that of President of the United States. What are those inestimable rights which his honor favors his neophyte with? The right to be tried by an imported court, by a packed jury, his sworn enemies; the right to have his wife judicially declared a strumpet, and his children judicially bastardized; the right to the sympathy of the judge while passing sentence of three years hard labor in the penitentiary for living with his own wife. The right to have his religion assailed; the right to be driven from his home without redress; the right to vote for a legislature to make laws, which any political despot can annul at pleasure; the right to pay taxes without representation; the right to be maligned, slandered and abused; the right to have pimps, whorehouses, gambling saloons, debauchery, forced upon him by judicial extortion; the right to live in a satrapy; the right to die and be buried.

These are some of the "rights" of the citizens of this Territory, in this vaunted republic to-day. Certainly the citizens of Great Britain, France, Germany and Scandinavia ought to be glad to repudiate such infamous tyrannies as they came from, and shout hosannah for the glorious privileges that American citizenship gives. O, ye poor benighted foreigners, how you must long for naturalization, in order that you may share with us these inestimable privileges and blessings, and such as are guaranteed in the following:

"It is therefore proper to say that while the case at bar is called, *The People versus Brigham Young, ITS OTHER AND REAL TITLE IS FEDERAL AUTHORITY versus POLYGAMIC THEOCRACY.*"—Opinion of Chief Justice J. B. McKean.

Respectfully, &c.,
JOHN TAYLOR.

This subject not being exhausted, I shall refer to it again.

A FURNISHED ROOM TO LET. Inquire at this Office. d 231 tf

DECEASED.

In this city, Nov. 3, JOHN W., infant son of John W. and Evelyn W. Andrew, aged one year, one month and three days.

In this city, Nov. 5th, at 5:30 p. m., from an injury caused by a fall last August, while working at the U. C. R. Depot, WILLIAM WOLSTENHOLME, aged 48 years, 1 month and 19 days. Deceased was born at Huntcoate, Lancashire, England, Sept. 16th, 1833. He joined the church in 1849, and emigrated to this city in 1855. He leaves a family and many friends to mourn his loss.

Funeral services at his late residence, 16th Ward, to-morrow (Tuesday) at 10 o'clock. Friends of the family are invited to attend.

MIL. Star, please copy.