

FEDERAL AND TERRITORIAL ATTORNEYSHIP.

Supreme Court of the United States.

No. 30.—OCTOBER TERM, 1873.

Zerubbabel Snow,
Plaintiff in Error,

vs.

The United States,
ex rel. Charles H.
Hempstead, United
States District At-
torney.

In error to the
Supreme Court
of the Terri-
tory of Utah.

Mr. Justice Bradley delivered the opinion of the Court.

The only question raised in this case is, whether, in the Territory of Utah, the attorney of the United States for said territory, or the attorney-general of said territory elected by the legislature thereof, is entitled to prosecute persons accused of offences against the laws of the Territory.

The government of the territories of the United States belongs, primarily, to Congress; and secondarily, to such agencies as Congress may establish for that purpose. During the term of their pupillage as territories, they are mere dependencies of the United States. Their people do not constitute a sovereign power. All political authority exercised therein is derived from the general government.

It is, indeed, the practice of the government to invest these dependencies with a limited power of self-government as soon as they have sufficient population for the purpose. The extent of the power thus granted depends entirely upon the organic act of Congress in each case, and is at all times subject to such alterations as Congress may see fit to adopt.

The organic act establishing the territorial government of Utah, passed September 9th, 1850, constituted a governor, a legislative assembly, and certain courts, and judicial and executive officers. Amongst the latter are an attorney for the territory, and a marshal.

By the 6th section of the act, it is enacted that the legislative power shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of that act. By the 9th section, it is enacted that the judicial power shall be vested in a supreme court, district courts, probate courts, and justices of the peace, whose jurisdiction shall be limited by law; provided, that justices shall not try land titles, nor cases exceeding one hundred dollars in amount; and that the supreme and district courts shall possess chancery as well as common law jurisdiction; and each of the district courts is invested with the same jurisdiction in cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the first six days in each term are appropriated to such cases.

The duties of the attorney are not specified in the act. The marshal is required to execute all processes issuing from said courts when exercising their jurisdiction as circuit and district courts of the United States.

This recital shows that the business of these courts, when acting as circuit and district courts of the United States, is to be kept distinct from their business as ordinary courts of the territory; and gives countenance to the idea upon which the territorial legislature seems to have acted in appointing separate executive officers for attending the courts when sitting as territorial courts. By an act of that legislature passed March 3d, 1852, it is, amongst other things, provided that an attorney-general shall be elected by the legislative assembly to attend to all legal business on the part of the territory before the courts where the territory is a party, and to prosecute individuals accused of crime in the judicial district in which he shall keep his office, in cases arising under the laws of the territory; and that for the other districts, district attorneys shall be elected in like manner with like duties. This law, it is understood, has always been acted upon until the recent decision of the Supreme Court of Utah, denying its validity. Similar laws have been passed and acted upon in other territories, organized under similar organic acts. The attorney appointed by the President for the territory has been accustomed to attend to the business of the general government the same as is done by United States district attorneys in the

several states; and the attorney-general and district attorneys of the territory have attended to the business of the latter, and prosecuted crimes committed against the territorial laws.

It must be confessed that this practice exhibits somewhat of an anomaly. Strictly speaking, there is no sovereignty in a territory of the United States but that of the United States itself. Crimes committed therein are committed against the government and dignity of the United States. It would seem that indictments and writs should regularly be in the name of the United States, and that the attorney of the United States was the proper officer to prosecute all offences. But the practice has been otherwise, not only in Utah, but in other territories organized upon the same type. The question is whether this practice is legal; or in other words, whether the act of the territorial legislature was authorized by the organic act. If it was, the plaintiff in error in this case was erroneously ousted from performing the duties of his office of attorney-general of the territory.

The power given to the legislature is extremely broad. It extends to all rightful subjects of legislation consistent with the Constitution and the organic act itself. And there seems to be nothing in either of these instruments which directly conflicts with the territorial law. If there is any inconsistency at all, it is in that part of the organic act which provides for the appointment by the President of an attorney for the territory. But is that necessarily an inconsistency? The proper business of that attorney may be regarded as relating to cases in which the government of the United States is concerned. The analogous case of the marshal, and the separation of the business of the courts as to government and territorial cases, seem to give some countenance to this idea. At all events, it has sufficient basis for its support to establish the conclusion that there is no necessary conflict between the organic and the territorial laws. The organic act is susceptible of a construction that will avoid such conflict. And that construction is supported by long usage in this and other territories. Under these circumstances it is the duty of the court to adopt it and to declare the territorial act valid. In any event, no great inconvenience can arise, because the entire matter is subject to the control and regulation of Congress.

The judgment of the Supreme Court of Utah must be reversed.

D. W. MIDDLETON,
C. S. C. U. S.

EDITORIAL EXCURSION TO SALT LAKE.

SALT LAKE CITY, Aug. 14.

To-day we have been the guests of the Deseret Agricultural and Manufacturing Society. We visited the Warm [Hot] Sulphur Springs, about five miles north of the city. The spring comes to the surface at the foot of a limestone ledge near the road in a powerful current of clear water, of the temperature of 128 deg. Fahr. The discharge is at least a thousand gallons to the minute. One cannot bear the hand in the water in the pool through which it flows. Notwithstanding its heat there is vegetation at the bottom, and our botanists secured plants for their collection. Nearer the city there is a smaller spring, of the same [much lower] temperature, which is much used for bathing. A convenient house has been erected for the purpose, and it is a place of popular resort for invalids and others.

Thus early in the history of the city, a museum has been established, in which a great variety of articles of historical value are preserved. There are several stone mills of the Ute Indians in complete order, showing their mode of grinding corn; also their bows and arrows, and the portraits of their chiefs. There are quite large collections of their minerals, of the woods in the mountains used for timber, of their birds and animals, and many things brought from foreign lands by the missionaries. All this is creditable to a young community who have been so busy in their struggle for subsistence.

A few of us who were interested in fish culture, took a ride with A. P. Rockwood out to his farm, some five miles out of town, and to the hatching house of Zion's Co-operative Fish Association. The road

took us through very fine farms, a part of them reclaimed from the swamp and a part of them from the alkali. The crops now upon these lands are as fine as anything we have seen in our journeyings. The process of reclaiming the swamp has been by draining. Ditches have been sunk several feet below the surface, and the dry land and the reclaimed swamp has now a complete system of irrigation. We saw many wheat fields just ready for the reaper, or already in shock, that would yield fifty bushels to the acre. In some cases the wheat had lodged. The valley, which extends thirty miles south of the city, will average nearly twenty miles in width between the mountain ranges. Nearly all the cultivation as yet is upon the east of the Jordan, which runs from Utah Lake into the Salt Lake through the middle of the valley. The water used for irrigation is taken from the canons of the Wasatch range on the east side. So extensive is the cultivation that all the water from these canons is now exhausted. The principal crops cultivated are wheat, oats, corn, potatoes and truck for the city market. We have rarely seen more luxuriant harvests than were ripening upon these irrigated fields.

Mr. Rockwood is a pioneer in the work of reclaiming alkaline soils. These lands were formerly thought to be worthless for all farm crops. He was ridiculed for his attempt to reclaim them. He had learned in his boyhood that wood ashes could be deprived of their potash by the process of leaching, and it occurred to him that alkaline salt might be washed out of the earth, and good crops be raised where nothing but sage and greasewood grew. He prepared his irrigation ditches, and turned the water upon these soils for five years before he accomplished his purpose. The land was cured by water alone, and he now secures large crops of grass and grain. We were shown extensive fields of grass that would turn two to three tons of hay to the acre, and were judged to be worth fifty dollars an acre standing. The principal cultivated grass is red top. We have so much land of this kind in our domain, that I regard this experiment as a matter of national importance. We have millions of acres of government land, worthless for all agricultural purposes, that can be made highly productive by irrigation. They improve rather than deteriorate by cultivation, and will yield thirty bushels of wheat to the acre. These irrigated lands are so valuable that an association has been formed to take the water from Jordan river, near Utah Lake, and distribute it by a canal upon the west side of the valley. It is thought that nearly ninety square miles can be made productive by this stream.

The fish association have bought 22 acres of land for their operations. There is a cold spring, with a discharge of about 500 gallons per minute, which furnishes water for the ponds. The trout are of the black speckled variety found in the streams upon both sides of the mountains, and their habits, as learned at this establishment, show them to be a distinct variety. While our *Fontinalis* spawn in November, and in the wild brooks are generally through in a month, these do not commence spawning until the last of April. While ours require from 40 to 70 days to hatch, these hatch in 14 days. The eggs are also smaller. The stock trout, about 250 in number, were taken from Weber river about two years ago, and will weigh from one to three pounds. We saw large trout in the market in the city, brought from Utah Lake, which we judge to be the same variety found in the creeks. As testified at the table, we do not think them at all equal to the *Fontinalis* in flavor. The common price is 20 cents a pound at retail. The other common varieties of fish are the mullet, chub and sucker. In Bear lake, in the northern part of this valley, there is a red-fleshed lake trout, which is said to be very fine. Mr. Rockwood hatched about 200 eggs his first season, and 10,000 the present spring. He had secured some eggs of the *Fontinalis* from the East, and about 600 of them had hatched and were doing well. He has lost very few of his parent fish, and he has the prospect of a large supply of spawn next spring. He had received from Prof. Baird about 6,000 shad fry from the East, which were planted in Jordan river in July. The attempt to raise shad in this stream, which flows into Salt lake, but has no communication with the sea, is an experiment of

great interest to all fish culturists. They will have access to salt water in the lake, but the brine is so strong that hitherto no fish has been found in its waters. The mouth of the Jordan is a large bay of brackish water, which is said to abound in fish. Will the shad find here its favorite food, and deposit its spawn in the upper waters of the Jordan? No one is well enough acquainted with the habits of the fish to tell the result. The experiment which Prof. Baird proposes to try in this lake with oysters has hardly so fair a chance for success. The waters are said to be one-third salt, and that is a much larger proportion than sea water.

In the afternoon we were the guests of the Deseret Agricultural and Manufacturing Society, of which Hon. W. Woodruff is the President, and made an excursion over the Utah Southern railroad to Little Cottonwood Canon. We went as far as Sandy on the broad gauge, and then took a narrow gauge up into the mountains. The road took us through one of the best cultivated districts in the territory. The plain was all irrigated, and was a constant succession of wheat, corn and potatoe fields, and broad meadows just mown or heavily burdened with grass. The labor of preparing these irrigation ditches, by a people struggling with poverty, has been immense. But these golden harvests, ripening in the summer sun, bear cheerful testimony to the wisdom of these labors. We have not seen in all our journeyings through the best agricultural regions of our country a more gorgeous sight than this valley of the Jordan.

The narrow gauge road was built for the benefit of a silver mine up the canon and large quantities of ore are brought down the road for smelting. This mine, called the Flag Staff, yields about 200 tons of a galena ore with silver in it. The granite stratum from which this ore is taken crosses the canon nearly at right angles, and immense boulders of this light colored stone have been rolled into the valley by the action of frost or other agencies. It is in this valley that they have such heavy falls of snow as to bury the miners' cabins, and prevent all egress sometimes for weeks in the winter.

It is from this point that the Mormons have taken the stone for the foundation of their temple, which they have been at work upon for the last sixteen years, and which is now only just even with the surface. Formerly this stone was carted by ox teams a distance of twenty miles or more to the city. Now the immense blocks are transported by rail.

The scenery in the Little Cottonwood canon is very fine. It is appreciated by rattlesnakes, and this is an important drawback to free locomotion in this charming valley. Some scores have been killed the present season, one with 18 rattles, and there are plenty more of the same sort left.

After our return from the excursion we were honored with a public reception at the City Hall, where we had the pleasure of meeting socially the Mormon leaders with some of their wives and daughters. At the close of the entertainment, some four hundred of the children, with their Sabbath school teachers, came into the hall and sang a few of their hymns. Addresses were made by several of our party and other gentlemen who were present. We learned, at this interview, many interesting facts in regard to the religious and social condition of the people, and the business enterprises of the city.—*W. C. in Country Gentleman.*

Our Country Contemporaries.

Beaver Enterprise, Dec. 27—

We learn that on several of the ranges where stock have been in the habit of grazing, the snow is getting so deep that many of them have been unable to get away, and as a consequence, have fallen victims to the severity of the weather. Numbers of them are reported as freezing every day, and those who have stock of any kind in exposed places, would do well to look after it.

Provo Times, Dec. 29—

Quite a number of people from the different settlements are in the city to-day, attending the Sunday School Convention. We are pleased to note the interest that is manifested by those interested in the matter throughout the county, as

it will be a lasting benefit to all concerned. The convention will be in session again to-morrow.

WESTERN NOTES.

The *Southern Californian* says: The sheep men are in fine spirits. They have plenty of new feed.

Pools to the amount of \$24,000 were sold during the late races in Los Angeles.

The *Gold Hill News* says nobody in this section ever saw so much egg-nog as was to be found throughout Gold Hill and Virginia on Christmas Day.

R. S. Thompson, of Napa, Cal., still continues to send grapes to the market, fresh from the vines, picked in December. The vineyard is in Brown's valley.

The successful construction of the Wilmington breakwater is having the desired effect. There is already a perceptible deepening of the channel going on.

A small propeller, the *Emerald Isle*, only forty-five feet in length, running on Lake Tahoe, is the fastest boat of her size in the United States. She makes her fifteen miles an hour.

The editor of *Measure for Measure* gently reminds his subscribers that "invariably in advance" doesn't mean simply a slight anticipation of the second advent of Christ—it means now.

The Tanguedoc almond trees in the orchard of O. W. Childs, Los Angeles, are now in splendid bloom. "This newly naturalized tree," says the *Express*, "is maturing finely, and will come of age next year, when we shall know its real value."

The *Stockton Independent* says: "Farmers residing on the west side of the San Joaquin, in this county, inform us that the prospect for crops was never more favorable. The soil is sufficiently moistened for the present, and everything in the agricultural line is lovely."

On the hills west of Carson, says the *Tribune*, where a few years ago not a tree could be seen, is growing up a young forest, that, in twenty years, will afford as much, if not more wood, than has, up to this time, been cut from the same ground.

"A Schoolboy" informs the *San Francisco Chronicle* that the name "California" originated in an old romance of the crusades which was very popular in the days of Columbus and Cortes. One of the characters in the romance is "California, the Queen of the Amazons."

Thirty-eight more acres have been deeded to the Lick Observatory on Lake Tahoe, and with the 177 acres previously given make 215 acres included in the selected site, which now possesses a pretty little harbor, suitable for landing and wharf facilities. Mr. Lick will proceed at once with the construction of the observatory buildings.

The Jute Manufacturing Company has received liberal orders from Stockton, Vallejo, Alviso, Petaluma and other places. The factory which they contemplate erecting will occupy three acres of land, and turn out 10,000 bags daily, giving employment to 400 white girls, boys, men and women. Wherever the capital stock is subscribed the company will locate.—*S. F. Chronicle.*

According to the *Sacramento Bee* the members of the Legislature were so anxious to decamp for their Christmas firesides as to forget to make out the credentials of Mr. Hager as United States Senator, until some person, noticing the blunder, rushed around and stopped Pacheco, Estee and the Secretary and Clerk till the defect was remedied.

More orders were received by the last steamer from Japan for rabbits, says the *San Francisco Bulletin*, than can be filled in this market. Chinamen are employed in the larger towns of the State hunting up fancy breeds for the Japan market. The large prices paid for fancy pairs of these pets in Yokohama has greatly stimulated the trade.

We saw yesterday, says the *White Pine News* of December 20th, some thirty or forty rabbits exhibited for sale in front of Plumhoff's saloon, on Main street. Plum. tells us that John Conger shot them all while riding across Steptoe Valley, a distance of some twelve miles. With the recollection of the oldest inhabitant so many rabbits as are now running in the valley have not been seen for years.