MISCELLANEOUS.

THE LEGAL FAMILY.

The following able, entertaining and instructive paper was read by Judge J. G. Sutherland, President of the Territorial Bar Association, at the first annual meeting of that body in this city, on Monday evening, June 5:

This is the first annual meeting of the Bar Association of Utah. I call it the annual meeting, though it is less than six months since it was organized. Its constitution provides for annual meetings, among other and less important things, for discussion of questions of public and professional interest. This is the initial meeting, when its members meet to exchange their first greetings and bring their first offerings. From this date it is hoped that a long series of annual meetings, noteworthy in character, may be held in regular sequence.

All professions, the members of which have not too strong and persistent centrifugal tendencies, have associations. The present inclination of all the social and economic factors is towards combination. Individualism is becoming obsolete; it belongs to the past. Every trade has its guild, and these are but constituents of more comprehensive federations.

It is fitting that lawyers should have associations. They do have them. There is a National Bar Association; there are State Associations. They generally exist in all populous centres. The legal profession by the nature of its studies and labors is a fraternity. It has no cult to maintain. All are laboring in a common field, on a common platform. All are estimated with reference to the same standard—pronounced good, bad or indifferent, by the same tests of honesty, learning and practical ability.

Our commonwealth has a population of a quarter of a million. The pursuits of the people are as diversified as those of any people on the continent. We are in a latitude favorable to activity and enterprise; we have a delightful and especially salubrious climate; abundant natural resources. Nature has marked Utah for a large population, for she has here offered to man every requisite for his comfort and prosperity. Budding cities dot it from north to south. One is metropolitan. Others imitate its growth and anticipate an attractive future with a laudable emulation.

The territory has a pioneer history of nearly half a century. It will deem itself in some sense pioneering until it is admitted into the family of States, and thus becomes a living member of that great body politic, the American Union. We are fondly and anxiously looking for that desirable event to occur in the very near future. It will establish an era in our political, social and economic history. After another fifty years Utah will teem with interesting antiquities. Perhaps the archives of our association will attract the curious student. Here he will find a mirror of the profession at the beginning of statehood. In our discussions and contributions upon juridical topics he will discover, it is hoped, that the profession here in these years is in touch with the profession throughout the civilized world.

The Pioneers who arrived in Utah in July, 1847, were united in one religious faith and so homogeneous in sentiment that no secular government was instituted for nearly two years. People who had undertaken such a journey, and together had encountered such common toils and dangers, animated by one spirit and one hope, needed no governor, no legislature, no courts, no lawyers. But it appears that there were among them statesmen and jurists. In March, 1849, a constitutional convention met to institute a civil government. It framed and adopted a state constitution in three days. It went into immediate operation with Heber C. Kimball, Chief Justice; John Taylor and N. K. Whitney, Associate Justices; Daniel H. Wells, Attorney General. The new State was Deseret. It must be conceded that it came into being by a speedy process. There has been little or no criticism of this constitution. I am not aware that any of its provisions have caused any accretion to the body of constitutional law. It was in force and the State of Deseret had an actual existence until the 5th of April, 1851. There are no reports of the court of the State of Deseret held by the judges just named; there are no traditions of any actual judicial work done by this court; of any forensic labor by the attorney general; nor does it appear that there were any inferior courts. In the absence of any record to the contrary it must have been a millennial period.

The Territorial government superseded the State of Deseret. Its first governor took the oath of office February 3rd, 1851, the jurat says, "before Daniel H. Wells, Chief Justice, Deseret." Had Heber C. Kimball resigned and Squire Wells been appointed in his place; or, what is more likely, was it forgotten, in their dearth of work, that the latter was attorney general instead of chief justice? One may forget what office is conferred in two years if he has never been called on to exercise it.

The act organizing the Territory was approved on the 9th day of September, 1850. At that time there was no mail service across the continent. In some manner however, the people became aware of this legislation. In July, 1851, steps were taken for election of members of the first legislative assembly. That body met in September of that year. Though the organic act limited the sessions to forty days it did not finally adjourn until March following. It did not sit during all this period; there were temporary adjournments from time to time. It adopted the legislation of the State of Deseret and enacted originally a considerable body of law. Some of it is still in force.

Fillmore was at first the capital of the Territory. There the first sessions of the supreme court were held. Lemuel G. Brandebury of Pennsylvania was the first Chief Justice, and Harry C. Brocchus and Zerubabel Snow the first Associate Justices. The two former served but a short time; the social atmosphere here was uncongenial and they went away in September, 1851. Judge Snow remained and for a time was the only judge in the Territory. In October, 1851 the legislative assembly authorized him to hold the district courts in each of the three districts.

There have been fifteen chief justices and twenty-six associate justices. The record of the supreme court prior to 1859 is lost. The records of the district court in the districts in which this city is located are preserved. This court October 6, 1851, improvised a seal. It is illustrated in the order for its adoption. The letters "L. S." are enclosed in a circle of pen marks. This seal served until 1858, when the present seal of the Third District Court was adopted. Four hundred and forty-one attorneys have been admitted by the Supreme Court, and now, according to the best information I have been able to obtain, there are about three hundred and fifty lawyers in the Territory; nearly two hundred in Salt Lake City.

Territorial courts in the past have not been popular; sometimes because the judges were personally obnoxious; and always because the people had no voice in their selection. They were generally non-residents, each from a different state, and brought ideas derived from their home practice, which were not always germane to the Utah system. The men who have received these appointments have been as well fitted for the office as could be expected. The mode of appointment, the salary and the tenure of office are salient features of a vicious judicial system. Nevertheless, Utah has had some excellent judges. During the last 20 years the business of the courts has rapidly increased in volume and importance. During this period all the court reports, nine volumes, have been published.

The Bar in Utah twenty years ago was an able Bar. Its talent and learning have since been maintained, and its numbers largely increased. Many whom the profession and the public delighted to honor are not now with us; some have gone to other fields, and others to "The undiscovered country from whose bourne no traveler returns."

Prior to 1874, Utah was part of the wild west, in which the people were more inclined to action than reflection; to take what they claimed than to sue for it; or when they brought suit, to temper their concessions of judicial authority by blending with its processes, more or less, the rough and ready remedial resorts of frontier liffe. One of the many histories of Utah records that it was at one time found impossible to serve certain writs; and when the question of jurisdiction was brought before the court, several lawyers entered, insulted the judge, threatening him with violence unless he decided in their favor.

In such time and with such practitioners, it ought not perhaps to surprise us that the legislature enacted a law defying any remedy for the collection of compensation for services of lawyers and making them amenable to summary punishment for misconduct in court.

Not long afterwards the legislature enacted a law, "that no laws nor parts of laws shall be read, argued, cited or adopted in any court during any trial, except those enacted by the Governor and Legislative Assembly of this Territory, and those passed by the Congress of the United States when applicable; and no report, decision, or doings of any court shall be read, argued, cited, or adopted as precedent in any other