

When a Void Probate Judgment is a Bar.

Delivered Dec. 18, 1874.

TERRITORY OF UTAH,
THIRD DISTRICT COURT,
The People of the United
States in the Territory
of Utah,
vs.
Nicholas Lawless.

December
Term, 1874.

1. The Probate Courts of Utah have not and never have had jurisdiction in criminal cases.
2. Nevertheless, judgments rendered by them, and executed, and the time to appeal from which had expired prior to the 23d day of June, 1874, are declared by act of Congress to be validated and confirmed.
3. Such a judgment, when pleaded in abatement, will be treated by this court as a bar to a prosecution for the same offence in this court since the passage of said act of Congress.
4. This court will not inquire whether it was competent for Congress to validate a void judgment.

The indictment herein was filed on the 4th day of December, 1874. It charges the defendant with having murdered one George Saively, on the 15th day of February, 1874. To this indictment the defendant interposes a plea in abatement, which will be substantially set forth in the opinion of the court. The People demur to the plea as not sufficient in law to bar further prosecution for the said crime of murder.

William Carey, U. S. Attorney for the People. John R. McBride for the defendant.

McKEAN, CH. J.—The defendant alleges, in his plea in abatement, that in the month of March, 1874, he was indicted by a Grand Jury of the Probate Court of Tooele County, for the same offence here charged against him; that in the same month he was tried in that court on that indictment, was convicted of the crime of manslaughter, and sentenced to imprisonment and was imprisoned therefor, and that no appeal has ever been taken from the said judgment against him.

Do these facts, taken as true, constitute a defence to the indictment in this court? This court and the Territorial Supreme Court, have repeatedly held that the Probate courts have no criminal jurisdiction; Congress, in the third section of "An Act in relation to courts and judicial officers in the Territory of Utah," approved, June 23, 1874, enacted that "Probate Courts, in their respective counties, shall have jurisdiction in the settlement of the estates of decedents, and in matters of guardianship and other like matters; but otherwise they shall have no civil, chancery, or criminal jurisdiction whatever," and in the case of *Perris vs. Higley et al.*, the national Supreme Court has shown that those courts never have possessed general jurisdiction, either civil or criminal, at law or in equity.

But in the act above referred to, approved June 23, 1874, Congress enacted that "All judgments and decrees heretofore rendered by the probate courts, which have been executed and the time to appeal from which has by the existing laws of said Territory expired, are hereby validated and confirmed." There would have been no reason in attempting thus to validate such judgments of Probate Courts as had been lawfully rendered and were already valid, and this provision was clearly intended to validate such invalid judgments as came within its terms. The judgment pleaded by the defendant might have been appealed from within thirty days at the furthest. (Laws of Utah, p. 31, secs. 29, 30; p. 66, sec. 25.) But no appeal was taken.

Whether it was competent for Congress to validate void judgments, is a question which this court will not discuss, leaving it to be considered elsewhere. The judgment pleaded by the defendant belongs to the class of judgments which Congress has declared are validated and confirmed. It is therefore held to be a bar to this indictment, and the demurrer to the plea is overruled.

Changes and Appointments.—The Conference known as the Bedford Conference is hereby discontinued, and those Branches of the Church in the counties of Norfolk, Suffolk, Cambridge and Huntingdon, heretofore situated in the Bedford Conference, will be designated as the Norwich Conference, with Elder Wm. Greenwood as President.

Those Branches of the Church in the counties of Bedford and Oxford heretofore belonging to the Bedford Conference will be added to the London Conference.

Those Branches of the Church in the county of Northampton, formerly belonging to the Bedford Conference are hereby added to the Birmingham Conference.

The book and other accounts of these Branches will be transmitted to the President of the respective Conferences as per the above change, and this Office duly notified thereof.

Elder George Ball is appointed to labor in the Bristol Conference, under the direction of Elder B. H. Watts.

Elder Vernee L. Halliday is appointed to labor in the Birmingham Conference, under the direction of Elder R. V. Morris.—*Millennial Star*, Dec. 1.

Information Wanted.—Mrs. Clark, of Flamstead, Herts, England, wishes to hear from her daughter Susan (now Mrs. Pixton), who, when heard from last, was living at Petersburg, Millard County, Utah.—*Millennial Star*.

Correspondence.

Mineral Discoveries.

BRIGHAM CITY,
December 16, 1874.

Editor Deseret News:

Mr. M. W. Dalton, of Millard City, has discovered a kind of mineral in the canyon near said town, which by experienced painters has been pronounced to be genuine sienna of various grades, also another kind called raw umber. The stuff has a metallic and very rich appearance and it produces the finest colors. It can be produced in inexhaustible quantities and importations of these kinds of paint seems no longer to be necessary. Messrs. M. W. Dalton, Albert Dalton, John Dalton, John Thain, and Charles Harding have located and secured a claim in said locality, under the mining laws. It promises rich developments. Messrs. M. M. Faulkner and John L. Anderson, competent painters, living here, attest the value and genuineness of the stuff for painting purposes and recommend its use. They say the first is sienna mineral of the finest quality; it gives a beautiful stain, such as rosewood, walnut and all other kinds of dark wood, makes a fine finish for buggies and carriages and has a nice gloss with it. It gives a very good solid color, particularly rich in appearance. The raw umber is equally good.

A. C.

Favorable Fall.

MIDWAY, December 12, 1874.

Editor Deseret News:

All is peaceable and quiet here in Midway, no rum mills or grog shops or any other such marks of modern civilization, to mar the peace or disturb the quiet of the inhabitants of our snug and pleasant little settlement. We have had a very healthy time of late; there has been but little sickness for a long time past in this place; for the last two or three weeks the weather has been warm and pleasant, more like Spring than Winter. All kinds of stock are doing well on the range, but little hay has been fed to stock as yet. We had to commence feeding our cattle by the first of November last year. Now our roads are dry and good, and the range is clear of snow.

We have a Sunday school, well attended. A day school will commence on Monday next, the 14th inst. Several of our young men are learning music, and are already enlivening the place with the sweet strains from their new brass instruments, which Brother Andrew Burgner brought from Switzerland this summer. He is the teacher of the young men who are learning music.

G. D.

A venerable Alabama negro has sentimentously expressed the principal cause of the decay of Southern prosperity in these words: "Afore the war the white gentlemen tended to the politics and the niggers worked. Consequently as crops was good, and white folks had money plenty. Now-a-days the white gentlemen and niggers am both gone crazy on politics; don't neither of 'em do no work, an' consequence is, ain't neither of 'em got nuff to buy corn bread."

BY TELEGRAPH.

CONGRESSIONAL.

SENATE.

WASHINGTON, 17.—The reading of the journal was dispensed with, and Cameron announced that King Kalakaua was in the president's room in the rear of the Senate chamber, and suggested that the Senators call upon him there. He moved that a recess be taken until one o'clock, and that the Senate proceed in a body to the House of Representatives at 12.15, and take part in the ceremony attending the reception of the king; agreed to. The Senators then proceeded to the president's room, where they were presented to the king, and at the hour indicated they went to the House of Representatives, headed by the Vice President and sergeant-at-arms. There was an immense crowd of spectators in the corridors and galleries, and many ladies were on the floor of the hall.

Hays offered a resolution for a select committee to inquire into the political affairs of Alabama, and in regard to the use of federal soldiers there for the intimidation of voters, &c.; adopted.

Glass, at the request of Young, offered a resolution for an inquiry of the Secretary of War, as to whether any army officers stationed in the South had been paid by, or had sought pay from, any State legislature, for his services, or whether such officers had practised as a lawyer while on duty as officers. Young, in reply to a question, said the resolution referred to Major Merrill, stationed in South Carolina; the House refused, 60 to 105, to second the previous question.

In regard to Holman's resolution, offered last Monday, declaring against the policy of granting further subsidies of any kind to corporations of any character, and in favor of limiting all appropriations from the public treasury to such amounts as are imperatively required for the public service, the House refused to suspend the rules and adopt it, yeas 149, nays 75, not two-thirds in the affirmative.

Lewis E. Parsons has been nominated for U. S. district judge of Alabama, vice Richard Busteed, resigned.

The President will issue a proclamation commanding all turbulent and disorderly persons in Warren county, Mississippi, to avoid transgression of the laws, and to repair to their respective abodes within five days.

HOUSE.

The naval committee, to-day, began the investigation of the charges against Representative Stowell, for selling a naval cadetship. Joseph G. Beattie testified that early in 1873 he paid \$1,700 to one Graham, who said he could secure the appointment for that sum, which was needed for party purposes; that he was chairman of the district committee in Stowell's district, and that the appointment was in Stowell's hands. The witness did not see Stowell until yesterday, and did not know him in the affair at all.

Punctually at a quarter past twelve, the senators entered the House and took the seats assigned them. Ten minutes afterwards King Kalakaua was announced and supported by Senator Cameron and representative Orth, chairman of the committee on foreign affairs, he walked down the main aisle to the front of the Speaker's chair, the senators and representatives standing in the meantime. Senator Cameron then said—"I have the honor to present to the Speaker the King of Hawaii." The Speaker said—

"Your Majesty, on behalf of the American Congress, I welcome you to these halls and, with the senators from our States and the representatives of our people, unite in cordial congratulation upon your auspicious journey, and express the gratification and pleasure afforded by your presence in the capitol of the nation as the nation's guest. Your Majesty's appearance among us is the first instance in which a reigning sovereign has set foot upon the soil of the United States, and it is a significant circumstance that the visit comes to us from the west and not from the east. Probably no single event could more strikingly typify the century's progress in your majesty's country and in our own, than the scene here and now transpiring. The rapid growth of the re-

public on its western coast has directly enlarged our intercourse with your insular kingdom, and has led us to acknowledge your wisdom and beneficence as a ruler, and your exalted virtues as a man. Our whole people cherish for you and your subjects the most friendly regard, and they trust and believe that the relations of the two countries will always be as peaceful as the great sea that rolls between us, uniting and not dividing us."

The King had a momentary conference with Judge Allen, the latter expressing regret that the King was so afflicted with cold and hoarseness that he was unable to read his reply, and it was read for him, as follows:

"Mr. Speaker, for your kind words of welcome I most cordially thank you; for this distinguished mark of confidence I tender to the Honorable Senate and House of Representatives my highest sentiments and regard. It is in accord with the very courteous and generous treatment which I have received from the executive department of the government, and from all people whom I have had the pleasure to meet since I landed on the shores of the Pacific. I appreciate the complimentary terms in which the honorable Speaker has referred to me personally. For our success in government and for our progress in a higher civilization we are very much indebted to the government and people of this great country. Your laws, your civilization have been in a great degree our model. I reciprocate, most cordially, the hope for the continuance and growth of the friendly relations between the two countries. I am most happy, gentlemen, to meet you on this occasion."

The Speaker was then introduced to the king, and after an exchange of courtesies, returned to his chair, knocked with his gavel, and the members and king retired, followed by the senators. The spectators dispersed, and the house proceeded with the regular business.

The senate bill for the relief of the grasshopper sufferers was passed.

Hurlbut, from the railroad committee, reported a bill chartering a double-track freight railway company, from tide water on the Atlantic to the Missouri river, and to limit the rate of freights thereon; ordered printed and recommitted.

WASHINGTON, 18.—The paragraph relative to the mileage of U. S. marshals provoked a long discussion, in the course of which Beck spoke of the Department of Justice as "Honeycombed with frauds," and Spear, of Pa., alluded to the western district of Arkansas and the district of North Carolina as being run by political thieves, vampires and scoundrels. Hale, of Me., and Maynard defended the department of justice. The result of the discussion and vote was that the provision in the last army appropriation bill providing for the allowance of mileage is not to be construed as applying to the legal traveling fees of U. S. marshals or deputies; no fees, however, are to be allowed for constructive mileage, and all claims for mileage are to be accompanied by sworn proof that the distance for which mileage is claimed was actually necessarily traveled.

When the paragraph for the department of justice was reached Beck moved to strike it out, and renewed his attack on that department, declaring that the Attorney-General was a more guilty man in connection with the affairs of Louisiana than Judge Durell himself, who had resigned and confessed his guilt. He charged that the department of justice had appealed from the decisions of the court of claims in the cotton cases, and had dismissed appeals wherever the friends of the department were employed, and had their fees arranged; that the department had used the army for the basest purposes, and was a department of injustice instead of a department of justice. When the proper time came he would, if he got the opportunity, make good what he had said about the Attorney-General and the department of justice.

Speer also again attacked the department of justice, and stated that the Attorney-General had not complied with the law which required a report to be made of the expenditures of its contingent fund.

Garfield replied to Beck and Speer, and defended the judiciary department, saying that while it had not always been as economical as it ought to have been, there had

been a steady earnest work in cutting down expenses, both by congress and the department itself. He contrasted the republican and democratic usage in making appropriations and severely criticised Speer's speech and the democratic party, declaring that the latter had bankrupted the country, and now, after the republican party had come forward and saved it, the democrats were barking about economy.

Speer replied sharply to Garfield's strictures, and declared that he would not submit, for himself or his party, to a rebuke from him; if they had erred, the man who lifted the rod of correction over them should be one on whose pathway light alone had shone, and not one who had come out of the mists and clouds of suspicion if not of guilt.

The motion to strike out was rejected and the bill was finally completed, and reported to the House. There a discussion arose over the renting, by the post office department, of a house on E street, belonging to Alex. Sheppard, for \$4,500 a year, which, it was alleged, only cost thirteen thousand dollars, and could not be let for two thousand; the rent was reduced to \$2,200.

The amendment abolishing the capital police and substituting watchmen was rejected. All the other amendments were agreed to in gross and the bill passed.

A resolution was adopted permitting the committee on the condition of the South to proceed either as a committee or sub-committee, to Louisiana, to make investigations.

Fort, of Ills., announced the death of his colleague Rice, and moved for a committee of five members to accompany the remains to Ills.; adopted. Adjourned till Monday.

WASHINGTON, 21.—A bill was introduced by Nesmith, for the construction of the Oregon Central Pacific Railway and telegraph line.

AMERICAN

PHILADELPHIA, 17.—The report of the committee to investigate the street cleaning contracts shows great corruption in the board of health. It appears that a systematic course of robbery has been pursued by that body for several years, in awarding contracts, jobs having been given invariably to the highest instead of to the lowest bidders, as required by law, the difference amounting to as much as four hundred thousand dollars. The report concludes with a resolution for the complete reorganization of the board.

The *Inquirer*, to-morrow, will contain a full expose of the "Katie King" swindle, the fact having been obtained from a gentleman who unearthed the fraud. He traced the supposed Katie to a boarding house, after a long continued effort, persuaded her to confess the deception she had been practicing and to produce the gauzy dresses worn at the manifestation. To-day, the production of a letter, with the jewelry, etc., presented her at the scenes, induced Robert Dale Owen and Dr. Childs, two of the leading spiritualists of this city, to publish and repudiate the swindle.

WASHINGTON, 17.—The House committee on the Pacific Railroad will meet to-morrow, when representative Luttrell will go before them to urge an immediate report on his resolution directing an investigation into the affairs of the Central Pacific Railroad and the contract and finance company. Failing in this, he says he will, at the earliest practicable moment, offer a resolution in the House to compel a report.

Luttrell, to-day, received letters, which will be laid before the interior department, reporting danger of Indian hostilities in Warner and Pitt River Valleys, California, unless the Indians there are provided for by the government; they are now said to be depredating on the whites.

The House bill reported without amendment from the Senate mining committee, to-day, provides that money expended in running a tunnel for developing lodes, shall be considered expended on the lode, whether located before or after May 10th, 1872, and work shall not be required on the surface to hold lodes, as provided by the mining law of that date.

Samuel Lee has given notice that he will contest the election of Rainey to Congress, from the first district of South Carolina.

NEW YORK, 17.—Frank C. White,