

## THE NEW FRELINGHUYSEN ANTI-MORMON BILL.

IN THE

SENATE OF THE UNITED STATES,

DECEMBER 3RD, 1873.

Mr. Frelinghuysen asked and, by unanimous consent, obtained leave to bring in the following bill; which was read twice and ordered to be printed:

### A BILL

IN AID OF THE EXECUTION OF THE LAWS IN THE TERRITORY OF UTAH, AND FOR OTHER PURPOSES.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the United States marshal of Utah Territory may appoint deputies in each of the judicial districts of said Territory. Said deputies shall be authorized to enter upon the discharge of their duties upon the approval of such appointment by the judge of the district court of the district for which each is appointed; and said deputies shall take and subscribe the same oath prescribed by law to be taken by the marshal, and give bond, with good and sufficient sureties, to said marshal, in the penal sum of ten thousand dollars, conditioned for the faithful discharge of their duties as such deputy; and said appointment, approval, oath and bond shall be entered upon the records of said court, and the judge of such district court may remove any such deputy marshal at pleasure, and the offices of attorney-general of the said Territory and territorial marshal are hereby abolished.

SEC. 2. That it shall be the duty of said marshal, in person or by his deputies, to attend the district and supreme courts of said Territory, and serve and execute all process, orders, judgments, or decrees issued, rendered or directed by said courts, or by any judge thereof, when exercising jurisdiction either as a circuit or district court of the United States, or as a judge thereof, or as courts of the Territory, or as a judge thereof.

SEC. 3. That the United States district attorney of said Territory may also appoint assistants in each of the judicial districts of said Territory, with the approval of the judge of the district court of the district for which such appointment is made, and said assistant shall take and subscribe the same oath prescribed by law to be taken by the district attorney; and said appointment, approval and oath shall be entered upon the records of said courts. Such assistants shall receive the same fees and emoluments as the district attorney would be entitled to for the same service, and shall be removable at the pleasure of such district judge.

SEC. 4. That it shall be the duty of said district attorney, in person or by his assistants, to attend all the courts, as well under the laws of the said Territory as of the United States, and perform the duties of prosecuting attorney in all criminal cases arising in said courts.

SEC. 5. That only male citizens of the United States over the age of twenty-one years shall be competent to serve as grand or petit jurors in any court in said Territory.

SEC. 6. That the grand jury of said Territory shall consist of eighteen good and lawful men, twelve of whom concurring may find and return a bill of indictment.

SEC. 7. That whenever a judge of any district court of said Territory shall determine that a grand or petit jury will be needed at a term of such court, the said judge, the clerk of such court, and the United States marshal shall, without regard to the religious, political, or social opinions of such citizens, make a list in writing of two hundred male citizens of the United States, above the age of twenty-one years, residing in such district, and shall affix thereto their certificate to the effect that the same is the list from which the grand and petit jurors are to be drawn for the terms of such court, to be held within the year next following, and shall cause the same to be filed in the office of the clerk of said court; and whenever the judge shall order the clerk to issue a venire, the clerk in the presence of the said judge and marshal or his deputy shall write the names contained in the said list, each on a separate slip of paper, all the slips being of the

same size and kind, and shall fold them uniformly so that the name written thereon shall be concealed, shall then place them in a covered box and thoroughly mix and mingle them, and shall then not select, but shall draw, as by lot, therefrom the requisite number of names. If a grand jury be required, it shall be drawn first, and consist of the number before provided. The number of petit jurors thus drawn shall be such as in the opinion of such judge is needful to discharge the entire jury duty for such term, and so that there shall always be three more jurors than the number required for each separate panel, and the panel in each trial shall be twelve men. The clerk shall make a list in writing of the names of the persons so drawn, and the clerk and the marshal shall affix thereto their certificates of the time and place of such drawing, and file the same in the office of said clerk, who shall forthwith issue a venire to the said marshal, commanding him to summon the persons so drawn to attend and serve as such jurors at the time and place previously designated by the said judge, and such jurors shall constitute the regular jurors for such term of the court for all cases, whether arising under the laws of the United States or under the laws of said Territory. If at any time a talesman or talesmen shall be required, his or their names shall be drawn from the said box by the clerk in open court, and if the attendance of such juror or jurors cannot be procured in a reasonable time other names shall be drawn, and so from time to time until the jury is obtained. No challenge shall be allowed on the ground that a juror had been summoned or had served at a previous term of court. Each party, whether in civil or criminal cases, shall be allowed three peremptory challenges. In criminal cases the court and not the jury shall pronounce the punishment under the limitation prescribed by law.

SEC. 8. That in all civil suits or proceedings at law or in equity wherein the United States are neither a party nor interested lawful costs may be taxed against and collected of the proper parties, under the direction of the court, and the collection thereof enforced by execution or attachment against the property of the party. The fees of the jury shall be advanced by the plaintiff, and shall be taxed as costs if the plaintiff recover.

SEC. 9. That the United States attorney, assistant attorney, United States marshal, and deputy marshal, and each grand and petit juror, shall receive, for his services in criminal cases or proceedings arising under the laws of the Territory, the same fees or compensation as are allowed for like services in criminal cases or proceedings arising under the laws of the United States, and such fees or compensation, being ascertained by the court or judge before whom the services are rendered, or, in case of the attorney and marshal, by the supreme court of the Territory, shall be paid to the said attorney, assistant attorney, marshal, and deputy marshal, and jurors respectively from the territorial treasury.

SEC. 10. That whenever any future marriage in said Territory shall rest solely on the contract of the parties, followed by cohabitation, in all prosecutions for bigamy, polygamy, or adultery, it shall not be necessary to prove either the first or subsequent marriage by the registration or certificate thereof or other record-evidence, but the same may be proved by such evidence as is admissible to prove a marriage in civil cases, and proof of cohabitation by the accused with more than one man or woman as husband and wife, and the acts and declarations of the accused, shall be admissible in evidence against him or her.

SEC. 11. That any woman now or hereafter holding the relation of spouse, or consort, and not that of a lawful wife, to any man who at the time cohabits with another woman as his wife, spouse, or consort, may file her petition in the district court of the district in which she resides, asking to be discharged from such relation, and the person to whom she bears the relation aforesaid being made a party thereto, and having notice of such proceeding, the said court may, upon due hearing, adjudge and decree her discharged and freed from such relation as aforesaid, and may adjudge and decree to her the possession and control of her minor child or children, together with such portion of the estate and property of the said

man to whom she held the said relation as shall, under all the circumstances, be equitable and just for the support of herself and minor child or children; and the said court shall cause to be made on the records an entry of such decree, and give to her a declaration of a discharge, setting forth briefly the substance of such decree; and upon the entry of such decree the said woman so discharged shall be a femme-sole: *Provided, nevertheless,* That nothing in this section contained shall be construed to have the effect of recognizing the validity or legal effect of any dual or plural marriage, or to repeal any laws in relation to divorce; and nothing in this act shall be held to repeal, annul, or change any existing laws against polygamy or bigamy otherwise than as the same are modified in regard to the evidence admissible to prove the said offenses by the preceding sections.

SEC. 12. That in all cases or proceedings when imprisonment may be ordered, if there be no jail or prison in which the person to be imprisoned can with safety be kept, the court or judge may order such person to be confined in any military prison or camp of the United States in said Territory, and the officer or person in command of such prison or camp is hereby authorized and required, on the order of the court or judge, to receive and safely keep such person until he shall be lawfully discharged or removed therefrom.

SEC. 13. That if the United States marshal, or any of his deputies, shall be resisted, or threatened with resistance, in the lawful execution of any writ, order, process, judgment, or decree of any court or judge of said Territory, said marshal, or either of his deputies, may, if, in his judgment, assistance is necessary, summon the posse comitatus, or may apply to the commander or person in charge of any military camp or post of the United States in said Territory, or to any one having charge of troops of the United States therein, for a posse to aid such officer, and, upon such application being made, the commander or person in charge of such military camp, post, or troops is hereby authorized to detail a sufficient number of men to act as a posse comitatus to enforce such writ or other process; and said marshal, or either of his deputies, may make application for such assistance when necessary to suppress any mob, riot, or other tumultuous disturbance of the peace.

SEC. 14. That it shall be the duty of the governor of said Territory, so often as it shall appear necessary, to inspect, or cause to be inspected, the jails or other prisons in said Territory, and the manner prisoners are held, treated, and imprisoned therein; and the governor shall make rules for the regulation and government of said jails and prisons; and he is hereby empowered to remove the wardens and keepers of all jails and prisons or other officers connected therewith, and appoint others in their stead, as often as, in his opinion, the public good shall require.

SEC. 15. That no alien while living in bigamy or polygamy shall hereafter be admitted to citizenship of the United States.

SEC. 16. That in the absence, or in case of sickness or other disability, of any of the judges of said Territory, or for any cause whatever which renders it necessary, it shall be competent for either of the judges to hold court or perform judicial duties in any of the judicial districts of said Territory; and it is hereby made the duty of said judges, upon the request or direction of the governor of said Territory in writing, to proceed to the district designated and hold the terms of the court therein until such necessity shall cease.

SEC. 17. That the probate judges and notaries public in said Territory shall be appointed by the governor, be subject to removal by him, and shall hold their offices for the term prescribed by law, or until their successors are appointed and qualified.

SEC. 18. That an appeal by any party aggrieved shall be allowed from all final decisions, orders, judgments, or decrees of all inferior courts in said Territory to the district court of the district; and a like appeal upon all matters of law and equity from the district courts to the supreme court, and in correction of the proceedings of such inferior courts of said Territory, or of such district courts; and to prevent and correct abuses by the same, the supreme court and the district

courts of said Territory are hereby authorized to issue writs of error, certiorari, mandamus, injunction, prohibition, or other remedial process; and a writ of error from the Supreme Court of the United States to the supreme court of the Territory shall lie in criminal cases where the accused shall have been sentenced to capital punishment; and in all cases of appeal from one court to another, where a bond or other security is required to be given by the party appealing, it shall not be lawful to demand or exact of such party the payment of costs adjudged or taxed against him until the appeal shall be finally disposed of by the appellate court; and the supreme court of said Territory may make rules and regulations as to the mode and manner of taking and perfecting appeals from one court to another in said Territory, and the security, if any to be given, in such appeals, so that the just rights of the parties may be secured and preserved: *Provided,* That no appeal in civil cases shall be allowed in matters not involving more than twenty dollars. And the supreme court of the said Territory and the judges thereof only shall have power to issue writs of habeas corpus.

SEC. 19. That in all cases of election by ballot it shall be unlawful for any person to put any number, figure or device upon such ballot, whereby any person may be enabled to ascertain by or for whom the ballot was given, and any violation of, or attempt to violate, this provision shall be deemed and taken to be a felony, and upon conviction thereof, the person so offending may be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. And at all elections none but male citizens of the United States, over twenty-one years of age, and who have resided in the county four months, and in the precinct or election district thirty days, prior to the election, shall be qualified to vote.

SEC. 20. That the probate courts in their respective counties in said Territory, shall have power to hear, try, and determine civil causes wherein the debt or demand does not exceed two hundred dollars, but shall not exercise any criminal or equity jurisdiction whatever; that the district courts in said Territory shall have exclusive original jurisdiction in all actions for divorce or alimony, and in all chancery cases or proceedings; all courts in said Territory, except the supreme, district, probate, and justices' courts, provided for in the organic act thereof, and excepting county courts so far as relates to the exercise of executive functions, except as hereinafter provided, are hereby abolished. The judges of the supreme court may by a general order fix the times and places for holding the respective district courts, which order shall continue in force for one year and until otherwise ordered; and special terms in any district shall, when necessary, be fixed by the order of the said judges. The supreme court may establish the judicial districts authorized under the act establishing said Territory, and assign the judges thereto. The district courts shall have exclusive original jurisdiction in all proceedings for the condemnation of private property for public uses, subject to review, as in other cases, by the supreme court.

SEC. 21. That each district court in the Territory shall appoint a shorthand reporter, whose duty it shall be to report and transcribe the testimony and proceedings in all criminal cases, and who shall receive compensation therefor not exceeding ten dollars per day for the time necessarily employed in court and in transcribing his notes, which transcript shall be filed in the cause. Such fees or compensation for services in cases of proceedings arising under the laws of the Territory, being taxed by the court or judge, shall be paid to such reporter from the territorial treasury; and in case the territorial legislature shall fail to make provision for the payment of the compensations by this act made chargeable upon the territorial treasury, then in such case the same shall be paid out of the funds which have been or shall be appropriated by Congress to defray the expenses of the territorial legislature, and for the compensation of the members thereof, and the compensation of such members shall be diminished accordingly.

SEC. 22. That if any person not qualified to vote shall vote, knowing himself to be disqualified, at any election, or if any qualified voter shall unlawfully cast at any election more than one vote for the same officer or officers, he shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in the district court of the proper district, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

SEC. 23. That at any general or special election held in said Territory, the election precincts shall be established and designated at least thirty days before the election.

SEC. 24. That the acts and parts of acts passed by the legislative assembly of the said Territory are hereby modified, controlled, or repealed as follows: That the corporation existing under the act entitled "An ordinance incorporating the Church of Jesus Christ of Latter-day Saints," approved February eighth, eighteen hundred and fifty-one, is hereby forbidden and disqualified from being the owner, directly or indirectly, of any amount of property in value greater than six million of dollars, and forbidden from solemnizing or forming, or authorizing to be solemnized or formed, any marriage or similar relation, contrary to the provisions of existing statutes against bigamy and polygamy, or contrary to the common law, and the said ordinance shall be subject to be altered or repealed by Congress, and by the State at any time formed out of the Territory of Utah, and the said corporation shall be subject to be dissolved by Congress or by such State; that the eighteenth and twenty-second sections of the act entitled "An act in relation to the judiciary," approved January nineteenth, eighteen hundred and fifty-five, and the first, fourth, twentieth, and twenty-sixth sections of the act entitled "An act regulating the mode of procedure in civil cases in the courts of the Territory of Utah," approved December thirteenth, eighteen hundred and fifty-two; also, sections four and thirteen of the act entitled "An act in relation to justices of the peace," approved February fourth, eighteen hundred and fifty-two; also, the act entitled "An act conferring upon women the elective franchise," approved February twelfth, eighteen hundred and seventy; also, the act entitled "An act providing for the management of certain property," approved January twentieth, eighteen hundred and fifty-four; also, that the first section of the act entitled "An act limiting the time of commencing civil actions," approved February sixteenth, eighteen hundred and seventy-two, are hereby repealed, and all causes of action referred to in the first section of said last-mentioned act shall remain and be unaffected thereby; and all the other parts of the last-named act shall only be prospective from the time of its passage, and shall not affect causes of action existing when the law was passed, which causes of action shall be limited and determined according to the then existing laws; and, also that the act entitled "An act for the organization of the militia of the Territory of Utah," approved January fifteenth, eighteen hundred and fifty-seven, and the "System of regulations for the present organization and government of the militia of the Territory of Utah," adopted July, eighteen hundred and fifty-seven; also, section seven and section eight, so far as they give the control of insane persons, their families, children, and estates, real or personal, and so far as they give the control of orphans and minors to the county courts of said Territory, being the seventh and eighth sections of the act entitled "An act creating the office of selectmen and prescribing their duties, also the duties of the county courts," approved January eighth, eighteen hundred and sixty-six; also, section one of the act entitled "An act containing provisions applicable to the laws of the Territory of Utah," approved January fourteenth, eighteen hundred and fifty-four; also, the act entitled "An act in relation to writs of habeas corpus," approved February second, eighteen hundred and fifty-two, so far as the same purports to confer upon the probate courts the power to issue or allow writs of habeas corpus, also section three of the act entitled "An act in relation to writs of ejectment," approved March third, eighteen hundred and fifty-