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VISIT OF THE SUPERINTENDENT OF INDIAN AFFAIRS TO SOUTHERN UTAH.

G. S. L. CITY, May 5, 1859.

HON. ELIAS SMITH:

DEAR SIR:—Yesterday I returned from a laborious, though interesting trip through the extreme southern portion of the Territory.

The purpose of my visit was to see and learn the condition, locality and character of the Pi-ute tribe of Indians and to bring certain children to this city.

The Pi-ute Indians, living in the southern part of the Territory, are divided into ten bands, each band numbering from 60 to 150, which live and roam on and adjacent to the Southern California road, from Beaver to the California line, and along the Santa Clara, Los Vegas, and the Virgin rivers. There is one principal chief, whose name is Tut-se-guvvit, whom all the bands recognize as their head. Each band has one or more sub-chiefs.

I saw all the chiefs, and many of the Indians during my recent visit. The Pi-ute Indians are not an exception to the other Indians in the Territory in regard to poverty; if there is any difference, these are the most destitute.

There is less game in the country claimed by the Pi-ute Indians than any other part of the Territory. The vegetation consists in a few scrubby cedars; cottonwoods on the banks of rivers; the cactus, bearing large pods, which, when roasted in ashes, are of indifferent taste; a few roots; some grass and weeds, the seeds of which are carefully gathered; and a peculiar shrub, called mesquite.

A few bands cultivate small patches of land; already, however, most of the land, which is advantageously located for irrigation, is occupied. By begging from the whites, and all sorts of shiftings, these Indians merely sustain life; and I very much fear that necessity has compelled them heretofore to steal cattle, horses and mules, and to commit the many crimes too fresh in our memory. I will render them such assistance, in future, as will be in my power.

There was during last winter, and still is considerable travel on the southern California road; most of which consisted in trains with goods from California for Utah Territory. This was during the season of the year when the Indians are most destitute; many, indeed, being in a starving condition, and, as I am informed, some of these trains were severely taxed by the Indians.

You are well aware that, owing to the entangled condition of affairs here, I could do but little officially until last June. Since then I have been constantly engaged among the Indians in different parts of the Territory, endeavoring with my utmost to ameliorate their condition. It was my desire to have visited the Pi-utes much sooner; this was impossible.

The awful Mountain Meadow tragedy was perpetrated in the Pi-ute country. But more of this by and bye.

On my way south I found the roads in an exceedingly bad condition, in consequence of snow, mud, tremendous hills, and innumerable rocks and stones. One wheel of each wagon and my carriage "smashed flat," besides minor accidents. Occasionally my mules would stray away; and always at a place from ten to twenty miles from any place. Patience would have been a great help, under such circumstances, but, never having, in my previous life, had occasion to very carefully cultivate this quality, I found, under these circumstances, some inducement to experiment on the cultivation of patience; which, I am happy to say, has resulted in the acquisition of a small store of that desirable commodity.

After I got south of Fillmore, on my way south, I found it difficult to procure a sufficiency of grain for my stock; for what reason I cannot tell. However, we finally got to Santa Clara.

I neglected mentioning that Mr. Rogers accompanied and rendered me valuable assistance.

I reached the memorable Mountain Meadow valley, 300 miles south of this city, Wednesday, April 14, and nooned at the spring in the south end of the valley, where the unfortunate emigrant party was camped from five to eight days.

This valley, usually called Mountain Meadows, is about six miles long and from one to three wide, running in a southerly direction, almost a continuous meadow, and excellent grass already growing throughout the whole valley. The road leading into the valley from the east goes through a narrow canyon; the road from the valley on the south turns abruptly to the eastward and passes over a considerable hill. There are two narrow outlets from the valley, besides those already mentioned, through which the water runs. The entire valley, excepting the roads and outlets above alluded to, is surrounded by high hills, with several small ravines or gulleys between broken and abrupt hills. From several points within the valley proper I could have a distinct view of anything that might be transpiring in the whole valley. There is one house in this valley, situated in the east end, where there is a corral, &c.

I have now traveled over much of this extensive Territory, and the Mountain Meadow valley is the most extraordinary formation

vest of the Rocky Mountains; probably in a higher altitude than any other valley, small or large, on the continent, yet it is a continuous and handsome meadow, furnishing grass for much stock, but in too high altitude for agriculture of any kind, and, even if it would admit of agriculture, nature has not supplied it with sufficient water, there being but two springs in the whole valley.

About the centre of the valley, in what is called the "Rim of the Basin," or the point where the water either finds its way to the Pacific or lakes of Utah Territory, nature, always profuse in making provision for the weary traveler and his stock, has, it would seem, designed this extraordinary and beautiful little valley, in so high an altitude that it can never be despoiled by the hands of the agriculturist, as a resting place, and for resuscitating the broken down stock of the anxious traveler before reaching the deserts that all travelers over the southern California road must encounter before reaching the healthful and rich California climate and soil, and on which deserts are now bleaching the bones of thousands of human beings and tens of thousands of animals.

I fear I have taken up too much space in describing the Mountain Meadow valley. But the terrible "drama" consummated in this little valley, hardly eighteen months ago, with the cries of women and children almost sounding in one's ears, must necessarily make this peculiar valley among the clouds, a subject of concernment to the inquiring mind.

I informed my then guide and interpreter (Mr. Ira Hatch) that I was anxious to see the spot where the massacre took place, and also where the dead were buried. I saw the three places where the dead are buried.

Information received from persons in and out of the Mormon Church, and observations whilst at the place, enables me to say that the emigrant party in question arrived and camped at the spring in the south end of the valley, Friday, Sept. 7th or 8th, 1857. The amount of property is estimated at from 200 to 700 head, with from ten to thirty wagons. My own impression is, that they had 600 head of cattle and about 40 wagons.

It is said the firing commenced on Monday, Sept. 10, before daylight, and that the firing was by the Indians fighting the said emigrant party then in camp at the spring, as already stated. The firing was continued, some say five, others say seven days.

During the five or seven days of firing and fighting by the Indians, the emigrant party was corralled, that is, they made a corral and temporary fort by their wagons and filled under the wheels and to the bed of the wagons with sand and earth dug in the centre of the corral. I saw the ditch and other evidences of there having been a corral. Sept. 17th, 1857, in the morning, a friendly Indian and one who could talk English, came into the corral. The emigrants having then been without water from five to seven days, made arrangements or treaty with said Indian—in which the Indians were to have the property, spare the lives of the whites, and permit them to return to Pinto Creek and Cedar city. From the spring and corral to the place where it is said they were murdered, and where I saw the graves (or imperfect holes) is at least one mile and a half.

I walked over the ground where it is supposed they were killed—the evidences of this being unmistakable from skulls, and other bones and hair lying scattered over the ground. There are there buried, as near as I can ascertain, 106 persons, men, women and children; and from one to two miles further down the valley, two or three who, in attempting to escape, were killed, partly up the hill, north side of the valley, and there buried, and three who got away entirely, but were overtaken and killed at or near the Vegas or Muddy; in all 115. I made strict and diligent inquiry of the number supposed to have been killed, and 115 is probably about the correct number.

April 15th—Arrived at Santa Clara this afternoon, and camped in town. Here I met Mr. Jacob Hamblin, who has been in my employ since last fall, collecting certain children, and other business among the Indians. Here (Santa Clara) myself and party were kindly treated during our stay—two days.

I say in the beginning of my letter that I purposed bringing to this city certain children remaining of the Mountain Meadow massacre. These children, sixteen in number, I have now in my possession. Thirteen I got in Santa Clara, at Mr. J. Hamblin's, who collected them in pursuance to my directions, and three I got in Cedar city on our way home, who were left there by Mr. Hamblin. I am pleased to say that Mr. Hamblin has discharged his duty in relation to the collection and keeping of these children.

The following is all I have been able as yet to collect of the history of these unfortunate, fatherless, motherless and penniless children:

John Calvin, now 7 or 8 years old; does not remember his name; says his family lived at Horse Head, Johnson co., Arkansas.

Ambrose Moroni, about 7 years, and William Taggit, 4 1-2 years, brothers. These also lived in Johnston co.

Prudence Angeline, 6 years, and Annie, about 3 years. These are said to be sisters.

Rebecca, 9 years; Louisa, 5 years, and Sarah, 3 1-2 years, named Dunlap.

Betsy, 6 years, and Annie, 3 years; said to be sisters. These know nothing of their family or residence.

Charles Francher, 7 or 8 years, and his sister Annie, 3 1-2 years.

Sophronia or Mary Huff, 6 years, and Eliza W. Huff, 4 years.

A boy—no account of him. Those among whom he lived called him William.

Francis Hown or Korn, 4 1-2 years old.

I have come to the conclusion, after different conversations with these children, that most of them come from Johnston co., Arkansas. Most of them have told me that they have grandfathers and grandmothers in the States.

Mr. Hamblin has good reasons for believing that a boy about 8 years, and belonging to the party in question, is among the Navajo Indians, at or near the Colorado river.

My communication is already too long, but I must ask your indulgence for a few lines more.

I will keep the children under my immediate supervision, until the person appointed to take them to Fort Smith arrives.

The massacre of an entire train, not one remaining to speak of the "drama" but sixteen fatherless, motherless and penniless children, supposed, probably, to be too young to give the affair tangibility, cannot remain long uninvestigated.

The cause or reason for the commission of a crime so terrible as that of killing at least 115 persons must assuredly become a subject of inquiry with the proper legal authorities.

The Pi-Ute tribe of Indians have been and are charged with the above crime. Last August, my attention was called to the Mountain Meadow affair officially. Since then I have made diligent inquiry, got the written statements of persons living in the neighborhood, and finally visited the southern country; and now, after full inquiry and examination, I deem it to be my imperative duty to say that the Indians had material aid and assistance from whites; and, in my opinion, the Pi-Ute Indians would not have perpetrated the terrible massacre without such aid and assistance.

Mr. Jacob Hamblin and others, of Santa Clara, expressed much anxiety to bring the guilty to justice.

I remain, very respectfully, yours, &c., J. FORNEY.

[From the Cincinnati Law Gazette.]

NATURALIZATION.

Jurisdiction of Probate Court—U. S. Circuit Court—Southern District of Ohio.

[We have heretofore given the decision of the Probate Court (see Law Gazette, vol. 2, p. 278) and subsequently the decision of the District Court of Ohio, for Hamilton County, on the question as to the right of Probate Courts to issue naturalization papers. The District Court, Judge Swan presiding, having decided that the Probate Court had no power to act in such cases. (See Weekly Law Gazette, vol. 2, p. 318.) Below we give the opinion of Judge McLean, sustaining the jurisdiction of the Probate Court.]

McLEAN, J. Smith, a native of Baden, represents that on the twenty-seventh day of October, 1856, he filed in the Probate Court, in and for Hamilton county, Ohio, the declaration of his intention to become a citizen of the United States; that he has been a resident of the United States for the term of five years now last past, and of the State of Ohio one year; that he is attached to the principles of the Constitution of the United States, and is well disposed to the good order and happiness of the same; and he is ready to comply with all requisites of the act of Congress to entitle him to citizenship, and asks for his final certificate.

It appears that, upon the 27th of October, 1856, the applicant personally appeared before the Judge of Probate for the county of Hamilton, in the State of Ohio, and stated himself to be a native of Baden, aged about forty-six years, bearing allegiance to the Grand Duke of Baden, and that he emigrated from Havre on the seventeenth day of November, 1852, and arrived at New Orleans on the twenty-fourth day of December of the same year, and that he intends to reside within the jurisdiction of the United States; that he makes report of himself for naturalization, and declared on oath that it is bona fide his intention to become a citizen of the United States of America, and to forever renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever, and particularly to the Grand Duke of Baden; which declaration was duly signed by the said Smith, and certified by John Burgoyne, Probate Judge, and by his deputy, J. M. Clark, under the seal of the Court.

On the 2d of September, 1856, J. M. Clark was declared to be appointed Deputy Clerk of the Probate Court, and commenced his duties as such. And that he was duly acting as such on the 27th of October, 1856, when the above declaration was made by Matthew Smith, of his intention to become a citizen of the United States.

In the case of Charic vs. Charic, 2 Wheat., 259, the Supreme Court of the United States says, "the power of naturalization is exclusively in Congress." But it has been repeatedly held that Congress have power to authorize such a jurisdiction to be exercised by a State Court.

By the third section of the act of Congress of April, 1802, it is declared that "every Court of record, in any individual State, having com-

mon law jurisdiction, and a seal and clerk or prothonotary, shall be considered a District Court," and have jurisdiction in matters of naturalization.

By the Constitution of Ohio, art. 4, sec. 7, it is declared "there shall be established in each county a Probate Court, which shall be a court of record, open at all times and holden by one Judge," &c.; and by the act of March 14, 1853, Ohio laws, certain records are required to be kept by the Probate Court, and "a special record in each case or matter, of all parties, returns, reports, awards and judgments."

The Constitution of the State declares the Probate Court shall be a court of record. It is not very well perceived how this declaration of the Constitution can be disregarded. There are numerous instances in which this Court unquestionably exercises a common law jurisdiction. In certain cases appeals lie from interior tribunals to the Court of Probate, where a jury is called. And it is provided in certain cases that a trial before a jury in the Court of Probate shall be had in the same manner as the trial in civil cases in the Court of Common Pleas. And in cases of fraud, the Court of Probate may set aside conveyances when made to defraud creditors.

It is very properly said by the Court of Appeals of Kentucky, in Morgan vs. Dudley, 15 B. Monroe, 722, that the act of Congress which authorizes State Courts to admit aliens to become citizens, does not describe them as courts of general common law jurisdiction, but as courts having common law jurisdiction. It would be a singular construction of the act of Congress to hold that the power of naturalization by the Probate Court cannot be exercised, unless its jurisdiction be shown to apply to all questions arising at common law. No such rule is sustainable. On the contrary, if the jurisdiction exercised by the Probate Judge be declared to be a common law power in the Constitution, and it is, in fact, an appropriate power to the object specified, there is no room for doubt on the subject.

But it is said the Probate Court must have a seal and clerk or prothonotary. The seal is provided by law. And every Probate Judge has power to appoint a deputy clerk or clerks, who shall take the oath, or oaths, required; and the judge is required to take security from them for the faithful performance of the duties of his deputy or deputies.

It is said in *ex parte*—Gregg vs. Curtis (Court Rep. 90) that a court of record without any clerk or prothonotary, or other recording officer distinct from the judge, is not competent to receive an alien's preliminary declaration. If this be admitted, it does not affect the question, for the Probate Judge has authority by law to appoint a deputy clerk or clerks, who are required to make the records; so that there is not only a clerk, but a recording officer duly appointed in the case under consideration.

The objection that the Probate Judge is his own clerk, and that he cannot discharge the duties of judge and clerk at the same time, is an exceedingly technical objection, and is without substance. The law authorizes the Judge of Probate to appoint one or more deputy clerks. The deputy clerk discharges his duty under the direction of the judge, and is subject to his order in the same way as a clerk of a court appointed in the ordinary mode by the Judge. The duties of the clerk are defined by law, and this being the case, of what importance is it whether he is the deputy or the principal clerk. In either capacity he acts under the Probate Judge, and is responsible for the performance of his duties. In *ex parte* Gladhill, 5 Metcalf 171, the court said: "It might be urged with some plausibility, that, if the Judge is especially vested by law with the clerical authority, the court has a clerk within the letter and equity of the statute. But the statute of the State has expressly authorized the Judge of Probate to appoint one or more deputies, and in the language of the Supreme Court of Massachusetts, above cited, 'the requisition in the act of Congress, that the court shall have a clerk or prothonotary, means, I think, not that the court shall have an officer denominated clerk or prothonotary, but a recording officer, charged with the duty of keeping a true record of its doings, and afterward of authenticating them.'

It has been said that a Probate Court is a court of ecclesiastical, and not common law jurisdiction, and is not, therefore, such a court as the act of Congress authorizes to naturalize aliens.

Strictly speaking, we have no ecclesiastical courts in this country. Such courts in English law are held by the King's authority, as "supreme governor of the church for matters which chiefly concern religion." We have Probate and other courts which partake somewhat of the nature of ecclesiastical courts; but they are regulated by statutory provisions and the principles of the common law. It is enough that the Constitution of the State of Ohio declares that the "Court of Probate shall be a court of record," and it is so in fact and in law, as it appears to me, although some of its powers are not founded on common law.

I think that the Probate Court has jurisdiction, under the act of Congress, to naturalize aliens, and that the declaration of Matthew Smith has been made in due form, and that on complying with the remaining requisitions of the act of Congress, the final certificate of citizenship may be granted to him.