

FEDERAL AND TERRITORIAL JURISDICTION.

WE publish, to-day, another ruling on the vexed question of Federal and Territorial jurisdiction, rendered this morning by his Honor, Chief Justice McKean, in relation to the empanneling of the Grand Jury, pending in his Court during the past week.

The highest legal authorities in this Territory, we believe we are right in stating, have on former occasions, rendered decisions exactly the reverse of this, holding that the District and Supreme Courts of the Territory were strictly Territorial, not United States, courts, and that while U. S. officers had power to act therein when U. S. business was under adjudication, the officers appointed and empowered by the Territory, and they only, had full authority to act in the adjudication of matters arising under the laws of the Territory.

But however extraordinary the grounds taken by his Honor the Chief Justice on this occasion, in assuming that the District and Supreme Courts of the Territory are U. S. Courts only, we are of the opinion that the final decision of the point will not be affected thereby, for questions which might be deemed of sufficient importance would be likely to be carried to the Supreme Court of the United States, where the decision on this, as on all other questions brought before it, would be final and unalterable.

If we recollect aright the U. S. Supreme Court has already rendered several decisions involving this much mooted question, in favor of Territorial jurisdiction.

LEGAL DECISION.

TERRITORY OF UTAH, THIRD DISTRICT COURT, SALT LAKE CITY.

September term, 1870. Chief Justice McKean presiding.

CHALLENGE TO THE ARRAY OF GRAND JURORS.

In obedience to a venire issued to him on the order of Mr. Justice Strickland, the United States Marshal for the Territory summoned Grand Jurors for this term of the Court.

On the Grand Jurors being called at the opening of the court, and on answering to the call, counsel, for certain persons charged with offences against the laws of the Territory, challenged the array as follows:

First. The said jurors were not drawn, selected and served as the laws of this Territory prescribe.

Second. They were not summoned by any officer of this Territory, authorized by law to serve the same.

The United States Attorney for the Territory demurred to the challenge.

Messrs. Hoge, Miner and Snow for the challenge.

Messrs. Hempstead, U. S. Attorney for the Territory, and Mr. Baskin, for the demurrer.

The Legislative Assembly of this Territory possesses large powers. The act of Congress organizing the Territory, approved September 9th, 1850, provides "That the legislative power of said Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act."

But the Legislative Assembly derives none of its powers from the Republic of Mexico, to which the Territory once belonged. That Assembly is the creature of the Congress of the United States, and has no powers, save such as are delegated to it, expressly or impliedly, by the act organizing the Territory. And Congress, in that act, reserved to itself the right to disapprove any and all acts of the Assembly, even when such acts are within the scope of the powers delegated to the Assembly.

If any acts of the Assembly are beyond the scope of the powers delegated to it, they may be set aside by the courts as well as by Congress. There is but one sovereignty in Utah, and that is the Sovereignty of the United States.

Having considered the powers and limitations of the Legislative Assembly, let us next enquire what are the powers and limitations of this Court.

What kind of a court is it? It is certain that it was neither created nor can be abolished by the Legislative Assembly of Utah. Its Judge was not a pointer, nor elected, nor can he be removed, nor impeached, nor can the Assembly. This Court is not technically a Territorial Court. No one claims that it is a State Court. Its jurisdiction is without the bounds of the States, and it derives none of its authority from any of the States. Under the United States government there are several tribunals. There is such a tribunal as the Supreme Court of the United States, whose terms are held in the Capitol at Washington. There is such a tribunal as the District Court of the United States, for the Northern District of the State of New York. The act of Congress organizing this Territory (Sec 10,) refers to such a tribunal as the "District Court of the United States for the present Territory of Oregon." There is such a tribunal as the District Court of the United States for the Third District of the Territory of Utah; and this last named Court is here and now in session. When, in October next, the Judge of this Court shall sit here, with his brothers Strickland and Hawley associated with him, that tribunal will be the Supreme Court of the United States for the Territory of Utah. The Supreme and District Courts of this Territory are, therefore, Courts of the United States.

The act of Congress, organizing this Territory provides, that "the said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction." It further provides, that each of the said District Courts shall have and exercise, the same jurisdiction in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States." It further provides, "that the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws." That is to say, this District Court has greater powers than those vested in the United States Circuit and District Courts within any of the States; for, after devoting, if necessary, the first six days of this term to the trial of causes arising under the Constitution and laws of the United States, then this Court must proceed to hear any such causes as, in the States, are tried in the State courts which possess chancery as well as common law jurisdiction. This last named jurisdiction, is given to this court for the reason that Utah is not a State, but is a Territory. Can it be that a court with such powers, is left by Congress to the control of the Legislative Assembly of the Territory?

Is there any law prescribing the manner of procuring Grand and Petit Jurors for criminal cases in this court? If there is, what is it? Is it an act of the Congress of the United States, or an act of the Legislative Assembly of the Territory? If both, are they consistent with each other? And if inconsistent, which must prevail?

While acting by assignment in this District, Mr. Justice Strickland, "upon notification by the United States Attorney that a Grand Jury would be needed," and also in the exercise of "his own discretion," ordered a venire to be issued by the clerk of this Court to the United States Marshal for the Territory. He did so in pursuance of those well known acts of Congress which prescribe this method of procuring juries in the Circuit and District Courts of the United States. The service of that venire by the Marshal has brought these jurors into Court. The act organizing the Territory, (sec. 10.) requires the Marshal to perform the same duties as the Marshal of the District Court of the United States for the then Territory of Oregon; and those duties were the same as those of the Marshal in the Northern district of New York. One of those duties is the summoning of Juries.

In the case of *Brannigan vs. The People*, decided by the Supreme Court of this Territory, and cited on the argument here, the petit jury was not summoned in accordance with either the laws of Congress nor those of the Assembly. The conviction of the prisoner was therefore properly set aside.

Having considered the powers and limitation of the Legislative Assembly, and also of this Court, let us now inquire what the Legislative Assembly has done or undertaken to do in the premises.

As already stated, the Act to organize the Territory was approved September 9th, 1850, and until January 1853, more than two years thereafter, the Assembly seems not to have touched the question

of grand and petit jurors for criminal cases in this court. Was there then no law upon this subject during those two years? Judge Snow, the senior member of this bar, to whose learned and exhaustive argument in support of this challenge, I listened with great interest and pleasure, was the first judge who sat on the bench where I now have the honor to sit; and that learned Judge, in pursuance of the Acts of Congress, ordered the venire to be issued to the United States Marshal for the Territory of Utah, and that Marshal summoned the jurors. I am not now saying whether that was right or wrong, but this I will say, that if it was wrong, then every man indicted and every man convicted during those years, was unlawfully indicted and unlawfully convicted.

But what did the Legislative Assembly do in January 1853? It enacted thus: "In jury cases, before the introduction of any evidence, the Court shall issue an order requiring an officer to summon, for that purpose, a reasonable number of judicious men, etc.;" and further, thus: "When necessary, the Court shall issue an order requiring an officer to summon fifteen judicious men, residents of the county, for a grand jury, etc." Whether this act was intended to apply to this Court or not, it makes no attempt to take from the Court the control of the venire. The words, an officer, may mean, and should be construed to mean, the "proper officer of the Court,"—in this instance the United States Marshal; and that officer is left at liberty to summon whom he pleases, provided they be "judicious men." There is in these particulars no necessary conflict between Congress and the Assembly.

The Act of Congress to organize the Territory (Sec. 9) provides "that the judicial powers of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace." The Assembly can no more add to this number of judicial bodies than it can abolish one or all of these. But by Act, approved Jan. 8, 1866, the Assembly has enacted that the Probate Judge in connection with three selectmen shall be known as the "County Court." Among the many duties devolved upon this "County Court" are the "care, custody and management of insane persons, who are incapable of conducting their own affairs, and of their estate, both real and personal;" and "the selectmen may transact business separately, subject to the approval of the 'County Courts,' relating to the poor, insane persons, orphans and minors, etc." "They shall also have power to appoint guardians for minors who are orphans, for the persons and property of the insane, etc." By another Act the Assembly directs these "County Courts" to select the men from among whom it commands the jurors to be taken for this District Court. It is not necessary, however, in disposing of the question at bar, to pass upon the legality of these "County Courts."

But the Legislative Assembly, by Act of January 1859, amended in February 1870, has sought to take from the District Judge, the United States Attorney, and the United States Marshal, all control over the jurors of this court. Congress says that the Judge, in his own discretion, or upon a notification by the Attorney that a jury will be needed, shall order the venire to issue; the Assembly goes by the Judge, goes by the Attorney, and commands the clerk to issue it. Congress says that the venire shall issue to the United States Marshal; the Assembly says it shall issue to an officer which it has elected, and which it calls the Territorial Marshal. Congress says that twenty-three men shall be summoned for Grand Jurors; the Assembly says that eighteen shall be summoned. Which must give way—the Congress or the Assembly?

The challenge to the array must be overruled, and the demurrer thereto sustained. Let the Grand Jury be sworn.

NOTICE!

IS HEREBY GIVEN, that I, JAMES H. HART, Probate and County Judge of Rich County, U. T., did, on the 26th day of March, A. D. 1870, enter in the land office, at Salt Lake City, U. T. for the use and benefit of the Citizens of Ithica, U. T., the following described land, namely: South west quarter Section 31, Township 13, North of Range 6 East, containing one hundred and sixty acres.

Any person or persons having claims in the above survey of land will file the same with the clerk of the County Court of Rich County, as prescribed by law.

JAMES H. HART, Probate Judge,

w23 3m

U. C. and C. P. R. R.

CONFERENCE TRAINS!

To be run

5th, 6th, 7th, 8th, 9th and 10th of OCTOBER.

WILL leave BRIGHAM 6:15 a.m., arrive at OGDEN 7:20 a.m.; leave OGDEN 7:50 a.m., arrive at SALT LAKE 9:50 a.m. Will leave SALT LAKE 5:20 p.m., arrive at OGDEN 7:20 p.m.; leave OGDEN 7 p.m., arrive at BRIGHAM 8:05.

The Train will stop at all intermediate Stations.

FARES from Brigham, Willard and Bonneville to Salt Lake, and return, \$3:25. From Ogden, the usual excursion rates.

Sacramento Time from Brigham to Ogden, Salt Lake Time, from Ogden to Salt Lake.

Jos. A. YOUNG, Supt. U. C. R. R.

JAMES CAMPBELL, Div. Supt. C. P. R. R. s665 w34:1

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TAXES! TOOLEE TAXES!

NOTICE is hereby given to the Tax payers of Toolee County, that the Territorial and County Tax for the year 1870 is now due and if not paid on or before the first day of November next, I shall proceed immediately thereafter to collect the same (and all delinquent Territorial and County Taxes owing for the year 1869) by distraint, as provided by law.

H. S. GOWANS, Assessor and Collector, Toolee County, Toolee City, Aug. 27, 1870. w30 9

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FOR SALE,

THAT VALUABLE PROPERTY known as the ROCK MILLS, belonging to the estate of the late President Willard Richards, situated at Farmington, in Davis county. For particulars apply to the undersigned, residing in Ogden. F. D. RICHARDS, Administrator. d236:1w-s30&w60:1m

Z. C. M. I.

PEELED PEACHES!

WE wish to urge upon the people the propriety of PEELING their PEACHES the coming season. We can find a market for well dried Peeled Peaches from this date.

H. B. CLAWSON, SUPT. d233 12 s60 8 w30 4