

FIRST JUDICIAL DISTRICT COURT.

FRIDAY, Sept. 3, 8 a.m.

Court met pursuant to adjournment.

The case of Henry Macaully vs. Chas. S. Clark was called and dismissed for want of prosecution.

Perry & Co. vs. Wm. Langhya & Gammel. Default taken. Judgment as assessed by the jury composed of the following:

W. M. Black,	Edsel Elmer,
Thos. Gustin,	Ell Randal,
Jno. W. Cummings,	J. J. Irvine,
D. Webb,	Chas. Foot,
J. W. Schofield,	W. J. Osborn,
Geo. Sidwell,	J. Butler.

\$960.28 amount of unpaid notes with 10 per cent. interest.

John Steward vs. Charles Harrison, continued for want of prosecution, afterward dismissed.

John Hutchison vs. Howe, cause dismissed at plaintiff's cost.

Edwin D. Webb vs. Washington Jolly and others, case laid over.

John G. Irwin vs. John M. Butler. "An appeal from the Probate court of Cedar county."

In answer to the motion to dismiss for two causes—

1st.—"That said defendant, Butler, had no interest in the land that could be conveyed by mortgage deed."

2d.—"The Probate court had no jurisdiction to hear, try, or determine this action."

The judge said: In determining this motion the court will judicially take notice that the title to lands in this Territory is in "the United States." Individuals without having any right or title to the land, have entered upon, improved and cultivated the soil, with knowledge of the owner; but they have no such interest in them as can be transferred by deed or mortgage. The naked possession can be transferred only by delivery to another, and it may or may not be indented by deed—but a party in possession can only be dispossessed by the government of the United States unless the relation of landlord and tenant exists. In this case there is no such relation. This mortgage is therefore void as a security for the debt, and cannot be enforced against the mortgaged property; but it does not as I think follow that this cause should for that reason be dismissed, for under the acts of the territorial legislature, I am of opinion that the Probate court might have given judgment for the mortgage debt against the mortgagor, although the security was void—if they had common law and chancery jurisdiction—and this brings me to consider the second point urged for the dismissal of this cause.

By reference to the acts of the Territorial Legislature it will be seen at a glance, that so far as it had the power to confer jurisdiction on the Probate courts, they are made the superior tribunals of the Territory. To them by statute is given the exclusive power to grant divorces and giving alimony, the probate of wills, the administration of decedent estates, etc., etc., and by an act of the last session of the legislature, so far as it could give power, to the Probate Judge with the Selectmen of the county, has been given the exclusive power of selecting all jurors, grand or petit, and judging of their qualifications for the District courts as well as all others; in all other matters they have concurrent jurisdiction with the District courts; and in addition to their four regular sessions, is by law always open.

Means for holding their courts is by law placed in their own power, while it is withheld from the District courts, and even the fees of officers and witnesses for services rendered in the District courts are often subject to their will, to be paid or not at the pleasure of the Probate Judge and Selectmen. Thus the power to control the action of District courts has been given to Probate courts, so far as it is in the power of the territorial legislature to do so.

If then the legislature possesses the power under the Act organizing the territorial government, to confer these powers upon the Probate court, it is the duty of this court to conform its action to the law.

The Organic Act provides, "That the legislative power of the said (Utah) Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States?" and the provisions of this Act, with certain restrictions not necessary to be noticed, in determining the question now before the court.

Is it to be pretended that the various acts of the legislative department of the Territory are in conflict with the Constitution of the United States? It then remains to be seen whether they are in conflict with the Organic Act.

The territorial system of the United States for a number of years, containing similar powers, and the construction usually given to them would seem to leave but little doubt on this question so far as their precedents can be useful to us in determining it; but it is desirable to meet this question as an original one, by reference to the Organic Act, if it can be done.

The 9th section of the Organic Act reads as follows:

"SEC. 9. And be it further enacted, That the judicial power of said territory shall be vested in a Supreme court, District court, Probate courts, and in Justices of the Peace. The Supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually, and they shall hold their offices during the period of four years. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of these several courts herein provided for, both appellate and original, and that of the Probate courts and of justices of the peace, shall be as limited by law: Provided, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said Supreme and District courts respectively shall possess chancery as well as common law jurisdiction. Each District court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all

cases from the final decisions of said District courts to the Supreme court, under such regulations as may be prescribed by law; but in no case removed to the Supreme court shall trial by jury be allowed in said court. The Supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decision of said Supreme court, shall be allowed, and may be taken to the Supreme court of the United States, in the same manner and under the same regulations as from the Circuit court of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars, except only that, in all cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by the said Supreme court, without regard to the value of the matter, property, or title in controversy; and except, also, that a writ of error or appeal shall also be allowed to the Supreme court of the United States, from the decisions of the said Supreme court created by this act, or of any judge thereof, or of the District courts created by this act, or of any judge thereof, upon any writ of habeas corpus involving the question of personal freedom; and 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; and the said Supreme and District courts of the said Territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and 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; and writs of error and appeal, in all such cases, shall be made to the Supreme court of said Territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the District courts of Oregon Territory now receive for similar services."

It would seem clear that this section vests the entire judicial power of the Territory in four different tribunals—A Supreme court, a District court, Probate court and Justice of the Peace. To determine the qualifications of jurors is a judicial act, and to create another tribunal, and take from these any judicial power to vest it in such new tribunal is clearly a violation of the Organic Act.

In the Supreme and District courts is vested original common law and chancery power; but no such jurisdiction is vested in the Probate court by the act.

It cannot be presumed that Congress intended to create two tribunals with concurrent powers, or it would have been so declared when the subject was before their minds; there was no necessity for having such tribunals; and from the constant conflict in the jurisdiction between such tribunals, much mischief would intervene.

Having provided tribunals having common law and chancery powers, it was necessary either to add the usual powers of Probate court, (which are not embraced within common law or chancery powers) to the District courts, or create another tribunal for that purpose, and this Congress did, in the Organic Act, by providing for Probate courts. The powers of these courts are limited to the probate of wills and testaments, the administration of decedent estates, etc., etc.

It would be as competent for the territorial legislature to create another Supreme court, and vest in it the powers conferred upon the one Supreme, as to create a tribunal possessing powers given to the District court. The jurisdictions of these tribunals are conferred by the Act of Congress, and the power thus given may be exercised as limited by acts of the territorial legislature not given by it.

For example, it is provided that the jurisdiction of the justices of the peace shall not exceed \$100. It is competent for the legislature to limit it to \$50, or any other sum less than \$100. Indeed it would seem clear that it would be as consistent with the Organic Act to create another legislative or executive department of the government, and invest them with the power to usurp the functions of these departments.

Indeed it would seem that the Congress of the United States, in the order in which the judicial tribunals are mentioned in the Organic Act, intended to set them forth in a regular gradation from the highest to the lowest, and hence they say the judicial power of the Territory shall be vested in a supreme court, District court, Probate court and justices of the peace. The several courts are the creatures of congressional legislation and their powers are conferred upon them by the same power that created them, the only power given the territorial legislature in relation to them is to regulate the mode in which these powers should be exercised.

The territorial legislature has no power to give or take away the jurisdiction conferred by the Organic Act.

For these among other reasons, it seems to me that the various acts of the territorial legislature, conferring, or attempting to confer original common law and chancery power upon the Probate courts is inconsistent and contrary to the Organic Act, and hence is void.

The Probate courts having neither common law nor chancery power, had no jurisdiction of this cause; and this court not having, by the appeal, more power than the tribunal from whence it came, it follows that this motion to dismiss must prevail. This suit is therefore dismissed at the cost of the plaintiff, in the court below.

Court took a recess till 11 a.m.

11 a. m.

Court resumed its sitting.

Case of D. J. Howard vs. R. Johnson called. This was a suit to recover rent and damages done to a house belonging to Howard, Camp Floyd. The latter was very excited and had to be restrained by the judge.

The jury finally gave the following verdict:—\$69 rent, \$84 damages.

The jury donated ten cents each to Howard at the close of the suit, he having insinuated in open court that a jury might be packed, which caused much merriment, to the no small annoyance of Mr. H.

Court adjourned till to-morrow, 8 a.m.

Mr. J. M. Butler was made a citizen of the United States.

SATURDAY, Sept. 4, 8 a.m.

Court met pursuant to adjournment. Judge read over the following cases on docket, and disposed of them as appears—

People of the United States vs. Macdonald, Earl and others—Rule continued against sheriff of Utah county to answer next time.

People of the United States vs. Lysander Gee. Cause continued with order for alias till next term.

People of the United States vs. John Scott et al. Cause continued with order for alias till next term.

People of the United States vs. George Toby. Continued with order for alias till next term.

People of the United States vs. Thomas Ivie. Rule against G. P. Billings, Sheriff of San Pete, continued and alias for Ivie ordered for next term.

People of the United States vs. Aaron Johnson. Continued with order for alias, with rule to keep peace till next term.

The case of Edwin D. Webb vs. Washington Jolly et al. A suit to recover \$75 debt and \$75 damage, there having been non-fulfillment of contract on the part of defendant in a trade, giving oxen for horses, etc.

Judge ruled that as defendant failed to answer com-

plaint, the jury had only to consider the amount of damages.

Jury presented verdict as follows:—\$75 debt and \$40 damages.

The judge then discharged the jury.

Thomas J. Schofield and Thomas Wright were made citizens of the United States.

The Judge remarked that it was one of the most agreeable parts of his duties to make citizens of the United States.

Court took a recess till 5 p.m.

5 p.m.

Court resumed its sitting, and then adjourned to meet at Camp Floyd on the 13th inst., to be in session there three days, to give naturalization papers; then to adjourn sine die.

F. C. ROBINSON, Reporter

STEALING BY WHOLESALE.—On Saturday night last twenty seven mules, as reported, were stolen from a pasture south west of this city; only six or eight of which have been recovered; a part of them have gone East as supposed, and the balance in some other direction. Horse and mule stealing has been very common here during the last year; but this is the largest transaction of the kind that has been reported of late in this county.

FROM OUR IMMIGRATION.

G. S. L. City, Sept. 12, 1859.

TO THE EDITOR OF THE DESERET NEWS:—

DEAR SIR—According to the request of President Young, we left this city on Saturday, August 27, to meet the immigration, find out their position and give them such counsel and aid as their circumstances might require.

On the morning of the 28th, as we were about starting from Lewis station, Capt. Brown's company rolled up, consisting of 66 wagons and 387 persons; all the camp were in good health and spirits with the exception of three or four who were slightly afflicted with eating fruit, which is in great abundance on the road. Having administered to them, as they needed no other assistance, we pursued our route.

We met the Church train under the direction of Captain H. D. Haight and Bishop Kessler at Hennefer's station; on the Weber, as they had already been supplied and were met with teams at that point, we bade them God speed.

On the evening of the 30th, we camped with the hand-cart company, under the direction of Capt. Rowley, at Yellow creek, consisting of 57 hand-carts, numbering 235 souls.

The company were generally healthy and some of the young people were very joyous and jubilant. There were among them many beautiful singers, who entertained us in the evening, around their camp fires, with some of the late popular airs, and among the rest several amusing hand cart songs, the chorus of which was—

Some must push, and some must pull,
As we go rolling up the hill;
Tous merrily on the way we go,
Until we reach the Valley, O!

And as they started next morning they, in their prompt energetic action and uniform movements, manifested a vivacity and life which comported very much with the spirit of their song. We had a very pleasant meeting with them, and gave them such counsel as their circumstances seemed to require. They had been met by five four-mule teams and with provisions, on Ham's Fork. With the aid of the mule teams and a horse team that went with us, and two yoke of cattle which we furnished, they were enabled to carry the aged and weary, and proceed comfortably. A brother Shanks, from Liverpool, who was very sick at our arrival, died next morning, and was buried at Yellow creek.

Captain Rowley informed us that he had had considerable trouble in consequence of persons straying off from the camp during their travel, and whom he had frequently had to send after, and that one aged lady, after diligent search having been made for her, near Greenriver, he had been unable to find.

Here we met Peter Jensen and another brother who had been sent out to meet Stevenson's company, who after going as far east as Green river, returned in consequence of one their horses failing, they reported that they had obtained information from the mail that Stevenson's company were living on half rations and were scarcely able to move for want of cattle. We took Peter Jensen back with us.

On the morning of the second Sept. we met six wagons belonging to the hand-cart company, that had been left behind at the Devil's Gate to recruit. These ox teams were not able to keep up with the hand-carts.

We met Capt. R. F. Neslin's company at their first encampment on Black's Fork, 15 miles west of Green river, Saturday evening, the 3d Sept. Next morning as the rear of Capt. Neslin's company were rolling out, the fore-part of Capt. Edward Stevenson's company came in view. We found the statement in relation to their lack of provision and being crippled in regard to cattle to be false. The captains of these trains informed us that their camps had been well supplied with provisions until that time, and that although they had lost a number of cattle, their losses were not as severe as most other trains and that they were making very good time. We found the companies in good health and spirits and their oxen in tolerable condition.

Our supply train, consisting of 26 yoke of cattle and four wagons, under the direction of Capt. George V. Thompson, of Cottonwood, in this county, was camped about two miles west of Ham's Fork. We returned with the companies to that place, divided the cattle between them and let them have 14 cwt. of flour, which the captains assured us was all they required to bring them comfortably to the valley. These companies consisting of over

one hundred wagons, were about equally divided. We partook of their hospitalities, held meetings with both companies, after camping on Monday night with Capt. Neslin's company, about 18 miles east of Bridger, we left the camps on Tuesday morning, in good condition, to return to the city.

In passing Fort Bridger, we observed that a great many improvements had been made and it presented a neat, orderly aspect. We were also informed that the rule prohibiting the sale and use of spirituous liquors is being enforced, which will, no doubt, tend to preserve a better understanding between the military and civilians, an object which all good men should strive to promote.

On our journey out we met a lieutenant with a small detachment from Bridger on a return from the neighborhood of Green river, where he informed us he had been sent in pursuit of deserters and that on his return, he found the dead bodies of two young women, who had been left behind by the hand-cart company and had been partly eaten by wolves and buried their remains, and he also informed us that they had left people at random to perish on the road. This horrible statement led us to inquire of all parties that had passed Green river to ferret out if possible the truth or falsehood of this allegation. We obtained about the following from Capt. Stephenson and Neslin, and their companies and others.

There was the remains of two persons, one an aged woman, the other a young person which some stated was a woman, others a man. Since the lieutenant had buried them they had been dug up by wolves, and Capt. Stephenson had deputed four men to again bury them deeply in the ground, so that they could not be reached; one of the party brought a piece of the old lady's hair, which was grey, that, and fragments of the attire, showed it to be the old lady's that Capt. Rowley stated he was unable to find, and who had met this horrible fate. Who the young lady or gentleman was we could not learn satisfactorily.

That two persons have perished is evident from the concurrence of all the reports. The lieutenant stated that they were two young women. This could not be, for the color of the hair showed one of them to be aged; and this is unquestionably the old lady to whom Capt. Rowley refers. Another rumor stated that a young woman was dissatisfied and started back to Green river, because they had not provisions, and perished on the way back. This is to say the least improbable, for we think there is scarcely a wretch to be found who is so lost to the common feelings of humanity as on learning that a fellow being was suffering would not help them, and if she died without giving this information, who could tell it afterwards? Capt. Rowley must know who left his company, and it is due to the public and to the friends of those who came with the hand-carts, that it be made known.

A young sister met an old sweetheart at Devil's Gate and married him. Two families, we are informed, stayed behind at Green river to work and calculate to come on in about a month; further than this, we can learn nothing. In relation to the statement that they suffered for lack of provisions, this could not be true, for they had flour at Green river, at which place they killed a beef, and fifteen or twenty miles from there they met mule trains with supplies.

Capt. Neslin and Stevenson's companies expect to arrive here on Wednesday or Thursday next.

We met among the companies, persons from different parts of the United States, England, Ireland, Scotland, Wales, France, Germany, Switzerland, Norway, Sweden, Denmark, Greenland, Iceland and Africa.

Respectfully, &c., { JOHN TAYLOR,
F. D. RICHARDS.

Deseret A. and M. Society.

G.S.L. City, Sept. 19, 1859—7 p.m.

Deseret Agricultural and Manufacturing Society met at the house of Prest. Hunter.

Present: Messrs. Hunter, Woodruff, Oliphant, Winder, Staines, and James A. Little.

Minutes of September 3d were read and accepted.

Mr. Woodruff moved that 500 copies of the list of premiums be published and distributed, and also posted in the principal places in the cities. Carried.

Voted that Messrs. Winder and Oliphant wait on Prest. Young, and request the use of the Social Hall for the next Agricultural show; and also the use of the Church cattle yard, for the exhibition of cattle.

Among the several subjects discussed, that of home manufactures was particularly dwelt on, and the necessity and importance of it urged upon the people.

It was reported that Mr. Feramor Little has brought to this valley, two splendid stud horses; one of the "Messenger" breed, the other "a Morgan"; which we expect will be exhibited at the next show.

Voted that Mr. Henry B. Maiben be appointed to superintend the decorating of the room, and for him to select his own assistants, and he is requested to appoint those who feel an interest in the fair.

Mr. Oliphant presented several Vandyke peaches, and Prest. Hunter presented a sample of his "Sweet Cling," which were very luscious.

Voted that Leonard W. Hardy fill the place of W. H. Hooper as one of the committee on class H, "Clothes and Dry Goods."

Voted that Ira Eldredge act in the place of John Van Cott as one of the committee on Class E, Farming Implements.

Adjourned to meet next Saturday, at 7 p.m.

THOMAS BULLOCK,

Secretary.