# DESERET NEWS: WEEKLY.

TRUTH AND LIBERTY.

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## THE WRIT OF MANDAMUS.

THE principal topic of conversation to-day is the "Liberal" attempt to deprive the women of Utah of the suffrage, a right which they have exercised under the local statute for more than ten years.

It will be observed that the proceedings in the case have been commenced in the Supreme Court of the Territory, which is now in session. A writ of *mandamus* was applied for and obtained, requiring the Assessor to erase the names of women from the Registry List, or show cause why he has not done so. This we believe is a great blunder, and rather remarkable considering the legal talent which has joined in the conspiracy.

The proceedings were, doubtless, instituted under the provisions of the local statute called the Civil Practice Act, which say that the writ of *mandamus* "may be issued by any court in this Territory except a Justice's, to an inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right to office, etc." The Civil Practice Act was approved Feb. 17th, 1870. But a little more that four years later, that is on June 23d, 1874, the Act of Congress popularly known as the Poland Bill was approved, and that law contains the following provision. "The District Courts shall have exclusive original jurisdiction in all suits or proceedings in chancery," etc. The Act of Congress would prevail as against the territorial statute, even though the latter were the later law, but, as we have shown, the former was passed four years after the other. The Supreme Court of this Territory, then, has no original jurisdiction in this case. It is strictly an appellate court, except perhaps in cases for writ of *habeas corpus*. A *mandamus* to an officer belongs to and is in the nature of original jurisdiction, and is so declared and defined in Bouvier. (See Law Dictionary, p. 100.)

We will not enter now into the question of the application of a writ of *mandamus* to the case at issue. But will merely say that it would be rather difficult to show wherein the Assessor has neglected to perform any "act which the law specially enjoins as a duty" upon him, or has prevented "the admission of a party to the use and enjoyment of a right to office;" and these are the only instances in which a *mandamus* is made the means of remedy by the local statute. The law certainly does not require him to erase names from the Registry List at the *ipse dixit* of an irresponsible person, neither does the presence of the names of women voters thereon affect in any way the admission of the individual making the affidavit to the enjoyment of any right or office.

Leaving other points in this case aside, we think it can be made clear that the Supreme Court of the Territory has no authority to issue a *mandamus* to an officer, and if we are not mistaken that Court has so decided in another case. The *mandamus* being void, if it be so declared this evening, the merits of the case will not be investigated at the present juncture.

## IS THE WOMAN SUFFRAGE ACT INVALID?

AN article in the *Herald* of this morning on the subject of the woman suffrage act has caused considerable comment, and we have been repeatedly asked if we did not intend to present the subject in its true light, as grave errors are set forth in the *Herald's* explanation of the case to come before the Supreme Court this evening. It should be observed, however, that the *Herald* gives the objectionable points as reasons to be offered to-night in favor of the erasure of the names of women voters from the Registry List, not as arguments of its own. It does not say anything in support of those alleged reasons, nor anything against them. We refer to the subject not with the desire to enter into controversy with our esteemed morning contemporary but to answer a very general desire that the points referred to may be properly explained.

The *Herald* quotes from the Organic Act the provision that at the first election in this Territory, every free, white male inhabitant above the age of twenty-one years shall be entitled to vote and hold office, but that the qualifications for voting and holding office at subsequent elections shall be such as shall be prescribed by the Legislative Assembly, and proceeds to say:

"That portion of the act providing that citizens shall be free whites, is of course obsolete, by the provisions of the Fifteenth Amendment; but the other portions, that persons shall be 21 years of age, males and citizens of the United States, are valid; and it will be claimed that it is not within the power of the Legislature to make laws which conflict with these provisions; it may prescribe, as is stated, such other qualifications as are deemed advisable by it, such as length of residence in a county, or the territory, taxpaying, and even a qualification for reading and writing, but it has no power whatever to pass a law which shall allow a person who is not a male, not a citizen of the United States and not 21 years of age—provisions in the Organic Act—the right of suffrage."

The statement which appears to be the *Herald's* own—whether intentional or otherwise—that the portions of the Organic Act which declare that "persons shall be 21 years of age males and citizens," of the United States, are valid, certainly contains a grave error. The Organic Act makes no provision whatever that voters at any election subsequent to the first election shall be *males*. The Organic Act confers upon the Legislature power to prescribe the qualifications of voters after the first election in the Territory, with the following as the sole exceptional provisions:

"Provided that the right of suffrage and of holding office shall be exercised by citizens of the United States, including those recognized as citizens by the treaty with the Republic of Mexico concluded February second, Eighteen hundred and forty-eight."

There is nothing about *male* citizens in this, the word only occurs in reference to the first election. A later enactment of Congress applying to all the Territories, extends this power further, and gives the Legislatures the right to prescribe the qualifications of voters subject only to certain restrictions, among which the word *male* does not occur, and the first of which is:

"The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the Constitution and Government of the United States."

It should be understood that citizenship is not a matter of sex. All persons born in the United States are declared citizens thereof, and by Act of Congress the wife of a native born or naturalized citizen, who might herself become a citizen, is declared a citizen by the act of marriage, without any oath or certificate of naturalization. Now were there any women citizens recognized by the treaty with Mexico above named? Certainly there were. Well, then, according to the Organic Act, they were equally entitled with the male citizens to become voters if the Legislature so prescribed.

The woman suffrage act is then quoted, and it is made to appear in the *Herald* article that women who are not 21 years of age are permitted to vote, and also that women voters are not required to reside in any county or precinct for a specified period. This is certainly remarkable in face of the plain wording of the laws. The woman suffrage act provides:

"That every woman of the age of twenty-one years, who has resided in the Territory six months next preceding any general or special election, born or naturalized in the United States, or who is the wife, widow, or the daughter of a native-born or naturalized citizen of the United States, shall be entitled to vote at any election in this Territory."

This law plainly prescribes three qualifications for women voters: First, they must be of the age of twenty-one years; second, they must have resided in the Territory six months next preceding the election; third, they must be either native born or naturalized citizens of the United States. But, following the precedent set by Congress, if the woman is the wife, widow or daughter of a citizen, by this Act she is entitled to the same privileges as if she were herself native born or naturalized. That is all. She cannot vote if she is not twenty-one years of age, nor if she has not resided in the Territory six months. And by the Registration Act she is required to swear that she possesses these qualifications, and in addition that she has resided in the precinct one month preceding the date of registration.

There are other points in the article to which we have not space to refer, but these are the most important. And whether they are the *Herald's* own views, or merely the views of those very "Liberal" persons who so desire to elevate the women of Utah that they are trying to wrest from them the power of the ballot, those points should be correctly understood by the public, that none may be under the impression that the Legislature has been passing laws in violation of Acts of Congress.

## COMMISSIONERS' COSTS.

THE decision of the Supreme Court in the case of Wilkins *vs.* Iron County, appealed by the latter from the Second District, is one of considerable importance to the Territory. It needs but little comment. The case is so plain that it is difficult to believe that even Justice Boreman could err therein. That the Counties are not liable to pay the costs of Commissioners' courts, petty tribunals created by the Poland Bill, is evident to any one having any knowledge whatever of the laws of Congress relating to this Territory. And what object Judge Boreman could have, except to annoy the county authorities, in ruling so diametrically in opposition to those laws, the language of which, as the Supreme Court decision says, is plain and unequivocal, it is certainly hard to discover. As to the anticipations of Congress that the Territory would provide for the expenses of courts which are not needed here under any pretense whatever, it is probable that as in the past or in the future, unless great changes arise, they will not amount to anything in the shape of material realities. The decision is definite and fully in accordance with law.

*In the Supreme Court of Utah Territory, June Term,* 1880.

J. R. Wilkins, Respondent,

*vs.*

Iron County, Appellant.

Appeal from the Second District.

The respondent is a Commissioner of the Supreme Court of this Territory, appointed under the provision of section 6 of an act of Congress, approved June 23d, 1874, in relation to courts and judicial officers in the Territory of Utah. As such commissioner he performed services as a committing magistrate in the examination of a person accused of a violation of some law of the Territory, the offense having been alleged to have been committed in Iron County. For these reasons he brought suit against the county, and recovered a judgment for the amount thereof, with costs.

The only question raised by the appeal is: Is the county liable for the fees of the Commissioners in such cases?

Section 6 of the Act of Congress above referred to provides "That the Supreme Court of said Territory is hereby authorized to appoint Commissioners of said court, who shall have and exercise all the duties of commissioners of the Circuit Courts of the United States, and to take acknowledgments of bail; and, in addition, they shall have the same authority as examining and committing magistrates in all cases arising under the laws of said Territory, as is now possessed by justices of the peace in said Territory."

The persons appointed under the above provisions are Commissioners of the Supreme Court of the Territory, and there can be no doubt but that their territorial jurisdiction is co-extensive with that of the power which appoints them—that of the whole Territory.

The Territorial Legislature has made no provision for the payment of their fees.

The last clause of article 2 of the Act of Congresss above referred to provides: "And the costs and expenses of all prosecutions for offenses against any law of the Territorial Legislature shall be paid out of the treasury of the Territory."

Congress evidently anticipated that the Territorial Legislature would provide for these expenses. In fact, by the terms above quoted, it imposed this duty upon the Legislature by providing that these "costs and expenses" should be paid out of the territorial treasury.

These officers were created by the act of Congress, with a territorial jurisdiction co-extensive with the limits of the Territory, and as to the subject matter of that jurisdiction, they have the same authority as examining and committing magistrates as justices of the peace throughout this territorial jurisdiction. With this extended territorial jurisdiction, it was wise and proper that the expenses attendant thereon should be paid out of the territorial treasury.

The language of the act of Congres in relation to these costs and expenses does not require any construction; it is plain and unequivocal.

There is, in our opinion, no legal obligation resting upon Iron County to pay this bill, and judgment should have been rendered for the defendant.

The judgment of the court below is reversed, with costs, and the cause remanded.

PHILIP H. EMERSON,
Associate Justice.

## THE CASE IN COURT.

MUCH to the disappointment of the public the decision in the mandamus case was not given this afternoon, but was laid over until Friday at 4 p. m. The case is one of great importance, not only to the people of Utah, but to the cause of woman suffrage all over the Union. The limitation of the arguments of counsel to one hour on either side, gave no fair opportunity for entering into the real merits of the case. There was scarcely time for a full argument on the demurrer, both points of which appear to us to be very well taken. We have already shown—in our article of last evening—that the Supreme Court has no jurisdiction in cases of mandamus to an officer, it belongs to original jurisdiction, and that is vested in the District Courts and not the Supreme Court of this Territory. That there was not sufficient cause for action named in the petition nor the writ is also plain to any one of understanding who examines them, and this was presented by counsel for the defendant as fully and forcibly as the time admitted.

The arguments of counsel for the petitioner were sophistical and some of their statements incorrect, for instance the affirmation that the woman suffrage act does not require women voters to be 21 years of age. The defect—if it be one—that the law of 1870 does not require women voters to be residents of the precinct is cured by the registration law which does make that requirement, and the Registrar who is now called in question acts under the latter law, which creates his office and defines his duties. A mandamus is for the purpose of compelling an officer to perform some duty which he has neglected. But in this case there is no neglect or non-performance of duty. The officer is called in question for not doing something which would be a violation of law, on the demand of a private individual who swears he is a taxpayer while his name does not appear on the Assessor's roll.

Of course we have no means of knowing what the decision is likely to be, but cannot think that it will be in the nature of a settlement of the validity of the Woman Suffrage Act which would be the practical disfranchisement of several thousands of women voters after exercising the right for more than a decade, a deprivation of their vested rights without opportunity of defending their position in a court of law.

Before saying anything further on the bearings of this important case, we wait the decision of the Supreme Court on the mandamus question.

## RE-ELECTED OFFICERS.

WE again call the attention of officers who are required by law to be commissioned by the Governor, to the necessity of complying at once with the provisions of the statute. It will be found on pages 14 and 15 of the Laws of Utah, 1880, under the title, "Of Special Elections." From this it will be seen that "all persons re-elected to any office, thereby becoming their own successors," are required when so elected to "give bonds, qualify and be commissioned by the Governor, as in other cases required by law."

Officers re-elected may be under the impression that their old bonds, commission, etc., are competent for their continued terms of office, but this would be a mistake. Difficulties might arise in case of their non-compliance with the law, and to save litigation and trouble, all officers who have not attended to this requirement should do so without delay. Those who represent, administer or execute the law, should be themselves the strictest observers of the law.

## IS THE WOMAN SUFFRAGE ACT VALID?

THE Supreme Court having decided that the Registration Officer cannot be compelled by mandamus to erase the names of women voters from the Registry List, the only question now at issue is, in regard to the valieity of the Act conferring on women the elective franchise, and that part of the Registration Act which is in accordance therewith. The main argument used by the very "Liberal" conspirators against the rights of women is that the law making them voters is void, because different qualifications are required for female voters than are required in another law for male voters. The older statute confers the right to vote upon every male citizen of the United States, over twenty-one years of age, who has resided in the Territory six months next preceding the election, and is a tax-payer in the Territory. An exception is made in regard to officers and soldiers in the United States army, to which we will again refer. The other confers the elective franchise upon every woman over twenty-one years of age who has resided in the Territory six months next preceding the election and who is either a native or naturalized citizen, or the wife, widow or daughter of a citizen.

These laws have been in force for several years, and under their provisions both male and female voters have cast their ballots at our elccions. The question now raised is aimed at the abolition of woman suffrage. It is claimed that as there is one quallfication for male voters which is not required of female voters, namely the taxation clause, the Act conferring upon women the elective franchise is void. But, as we showed at the time of the discussion on this question in the Tooele case, if this cause of objection was of any real force and effect, it would seem rather to strike at the tax qualification imposed on male voters but not on female voters, and make that requirement void without affectinn the validity of the later statute. But this is not what the "Liberals" desire. These attempts to procure the repeal of the woman suffrage law having so far failed, it is now intended, if possible, to reach it through the courts, and kill by judicial rulings that which has not been reached by congressional legislation.

The argument against the validity of either law is founded on the assumption that "inequality" is established by the woman suffrage act, which is said to have created "a new class of voters," and the provisions for the two classes not being uniform, the discrepancy is pronounced