COMMUNICATION

Of Attorney General Mr. Z. Snow to the Legislative Assembly.

ATTORNEY-GENERAL'S OFFICE,
Salt Lake City, Jan. 23, 1872.

TO THE HON. ORSON PRATT, SPEAKER OF THE HOUSE OF REPRESENTATIVES:

SIR:—In accordance with the request of the House of Representatives specified in its resolution of the 19th inst., I have the honor to inform the House, that at the September term, 1870, of the Second Judicial District, sitting at Beaver, a case was decided by the Hon. C. M. Hawley, by which it appears that, one Morgan Peden had been indicted, tried and convicted of a public offence by the Probate Court of Beaver County. The District Court held that, the Probate Courts have not criminal jurisdiction, and that the Legislative Assembly could not confer it upon them. Afterward, a suit was commenced in the District Court by Mr. Peden, for false imprisonment, against the Probate Judge, the Sheriff of the County, and the prosecuting witness, for fifty thousand dollars. This suit is still pending, the defense of which is entrusted to Mr. Hoge and myself.

Soon after the adjournment of the Legislative Assembly, at its last session, a suit was brought to a hearing in the Third Judicial District Court, which was a case brought there upon a certiorari issued to the Probate Court of Salt Lake County. The return showed that the Probate Court had rendered a judgment in a civil suit, originally commenced therein. The Court decided against the jurisdiction, holding that the Governor and Legislative Assembly could not confer it. It therefore reversed the judgment and dismissed the case. This was removed to the Supreme Court of the Territory. On the hearing, the judgment of the District Court was affirmed. There being more than one thousand dollars involved in the case, under my advice it has been removed to the Supreme Court of the United States, where it is now pending.

February 20, 1870, a man by the name of Frederick J. Taylor filed a bill for a divorce against his wife, Josephine Taylor, in the District Court of the Third Judicial District. This bill was, by the District Court, dismissed for want of jurisdiction. The complainant appealed to the Supreme Court of the Territory. The decree of dismissal was reversed, the Supreme Court holding that the District Court *had*, and the Probate Courts *had not*, jurisdiction in divorce cases.

A *case* of *divorce* arose in *Carson County*, when it constituted a part of Utah, and was brought to the Supreme Court of the Territory, which was decided by that Court in 1861. The Supreme Court, in that case, *held that the Probate Courts had*, and the *District Courts had not, jurisdiction* in *divorce cases.*

There is a case pending in the District Court of the Third Judicial District, involving the right to more than one thousand dollars' worth of property, the title to which is derived from a decree of divorce entered by the Probate Court. I am instructed to remove the case to the Supreme Court of the United States, if unsuccessful in the Territorial Courts, which I need not inform your Honors will be done in due time.

I am ignorant of any law of Congress, or of any State, or of any Territory, which has any bearing in settling the questions involved in these several cases, except the Organic Act, and the Statutes of Utah, with which your Honors are familiar.

Though the resolution does not call for any opinion of my own as to the legality or soundness of these decisions, I still feel it to be my duty to suggest that the Organic Act was approved September 9th, 1850. The Act of Utah, conferring jurisdiction in civil and criminal cases in the Probate Courts, was approved by the Governor in February, 1852, being an act passed at the first session of the Legislature, and was re-examined and passed January 10th, 1855. The Divorce Act was passed March 6th, 1852, and has not been called in question, either by Congress or the Courts, till the decision above mentioned. I further remark that I have, as your Honors well know, been a District and a Probate judge, and acting as the latter, have exercised the jurisdiction now ruled against, which I should not have done had I been of the opinion the Legislature could not confer that power. No new light has been elicited on these questions by the recent discussions, nor by the arguments of the judges. I have not, therefore, changed my opinion.

At the March term of the Third Judicial District Court, 1870, which your Honors will observe was the first Court held after your last session, an information in the nature of quo warranto was filed by the United States on the relation of the United States Marshal against J. D. T. McAllister, the Territorial Marshal, claiming in behalf of the United States Marshal the right to be the executive officer of the District courts, and of the Supreme Court, and to serve all the processes issued by either. To this the Territorial Marshal, Mr. McAllister, who had qualified and been commissioned as the law requires, appeared and disclaimed all right to be the executive officer of these Courts, or to serve their process when they were exercising their jurisdiction as Circuit and District Courts of the United States; but claimed the right to be the executive officer of these Courts and to serve their process when they were exercising their jurisdiction in cases arising under the Territorial laws. The Court held that the United States Marshal had the right in all cases, and entered a judgment of ouster against the Territorial Marshal, and instated the United States Marshal. This was removed to the Supreme Court of the Territory.

In the month of August, 1870, as Attorney-General, I made application to the Judge of the Third Judicial District to apportion the Grand and Petit Jurors among the Counties of the District, which was granted and the venire issued, directed to the United States Marshal, as the Court before had ousted the Territorial Marshal. This writ was not served.

Major Hempstead, then the United States Attorney for Utah, made application to the Court for a venire for a Grand and Petit Jury, which was granted, returnable at the September term of that year.

A challenge to this pannel was overruled, and the Grand Jury sworn. This Gaand Jury was summoned by the United *States Marshal* from the body of the District, the Statute of Utah being entirely ignored.

Since this discussion overruling the challenge to the Grand Jury, there have been many indictments found, but only two or three cases of punishment; and no case tried, I think, without an exception being taken to the Grand Jury.

At the same September term, 1870, the United States, on the relation of Mr. Charles H. Hempstead, filed an information in the nature of a quo warranto against myself, as Attorney-General of the Territory, claiming that the United States Attorney was to discharge the duty of conducting all the business in the Courts, as well for the Territory as for the United States.

To this I appealed in person, and disclaimed all right to conduct business in behalf *of the United* States, but claimed the right to conduct business in behalf of the Territory. The Court however rendered judgment for the United States and against me.

This case was also removed to the Supreme Court of the Territory, and was heard in connection with the case of the United States against McAllister, as both involved the same principles.

The judgment of the District Court in each of these cases was affirmed. As the principle involved in these cases was the same, I removed the case against myself to the Supreme Court of the United States, where it is now pending.

If that Court sustains the Courts here it will produce a very serious revolution in the affairs of the Territory. It will settle the question of legislative power, so far as that power relates to the jurisdiction of the courts; and so far as that power relates to the right of the Territory to appear in court by an attorney of its own selection; and so far as that power relates to selecting or appointing ministerial officers of court. I add that on the most careful examination I have been able to give, I have failed to find a case where the government of the United States has authorized or where their Courts have sustained a proceeding in the name of the United States, against an officer of a State or of a Territory to oust him from office, except in cases arising under the 14th amendment to the Constitution which was provided for by the Act of Congress of May 31, 1870. By reference to my preceding statements the House will perceive that the Act of Utah relating to the mode of procedure in selecting and summoning Grand and Petit Jurors has been held invalid.

A Hosea Stout has, among others, been indicted for the crime of murder by a Grand Jury summoned by the United States Marshal, who utterly disregarded the Utah Statute. On being arrested he made application for a writ of *habeas corpus* to the District Court of the Third Judicial district of the Territory of Utah, claiming that the indictment was not found by a lawful Grand Jury, and therefore it was void. This writ the court refused, and Mr. Stout appealed to the Supreme Court of the United States.

This case has been argued but the result is not known. Report says, Mr. Stout's attorney at Washington City has given hopes to him.

If the indictment be void, it may involve in the future serious considerations. If it be voidable only, still it will result, do doubt, in much good. If the proceedings are sustained as neither void nor voidable, it will require a great change in legislation in the Territory.

A case arose, growing out of an Ordinance of Salt Lake City, in which an exception was taken to the manner of summoning the Traverse Jury, it having been summoned by the U. S. Marshal as above stated. This case has been removed to the Supreme Court of the United States. When all these cases are decided by that Court, as it is the Court of last resort, it will be the duty of all citizens as well as officers to conform to its rulings. Until the decisions be had, some inconvenience must necessarily be felt.

Our registry laws have given rise to two cases, one in the Supreme Court, and one in the District Court. The question involved in each is, whether or not it is the right of any and every resident of the Territory to go and examine at pleasure, the records of the County, without the consent and against the will of the *Recorder*.

Though this last item is not referred to in the resolution of the House, I have deemed it of sufficient importance to call the attention of the House to it.

I have the honor to subscribe myself, your obedient servant,

Z. SNOW,
Attorney-General.

EDITORIALS.

THEY must be a rather vicious people, or there must be a large and audacious number of vicious people, over in California, judging by the many chapters we see in the papers of that State about hoodlumism and other evils prevailing there. The Oakland *News and Transcript* says—

By this time, we should judge, the public have become heartily tired and disgusted with Dr. Holland and his "social evil" bill, designed to create fat places for a few doctors and to place unlimited power in the hands of the San Francisco police to blackmail and swindle an unfortunate class. If the Legislature really wants to do something towards lessening the amount of vice and elevating the standard of public morality, we suggest that more stringent laws be enacted upon the subjects of abortion and seduction. We can hardly glance over the columns of a respectable newspaper without meeting with advertisements suggesting the nefarious business of the "doctors" signing them, and under the decision of our Supreme Court in a celebrated case, it would seem impossible to convict an offender as the law now stands.

Now if the people of California really desire to continue near neighbors of Utah and on neighborly terms with our people, we really must insist upon a little more attention to good morals on the part of our friends the Pacific slopers. Not that they are to be classed as specially worse than other of our neighbors, in fact we would really like to think better of them, and certainly, according to their own papers, there is wide room for reform. One thing, however, we are glad to say to their credit —— they have been moving lately a little towards meting out justice to some of the hoodlums and the gamblers, and there are evidences that the seducers and adulterers may expect to be reined up by and by. It is a good sign, if these movements are genuine.

JUDGING by the actions of some persons when they have been invested with a little brief authority as Federal officers in a Territory, it may be fairly supposed that they consider that one of the principal of their official duties is to place themselves in direct antagonism to the people among whom they are appointed to serve, with the express instructions to lose no available opportunity to give expression to their antagonism, and in as offensive a manner as possible, or at least as is likely to be safe as to personal considerations. Only a few of these officials appear to have the tact to wield their little authority gracefully, or the good sense to exercise it judiciously. The most of them appear to consider it a special evidence of sagacity to make official power appear hateful and to exhibit the ugliest side of themselves. It is but just to them to say that in endeavoring to so exhibit themselves and their authority they are eminently successful. They are welcome to all the credit which this acknowledgment may bring them.

Considering the prevalent desire for office, on account of both the importance and the lucre which it may bring, it is not very extraordinary that officials should oppose the investment of the people with the rights and privileges of American citizens, which, as things go, Statehood only can bring, and considering also that such investment would prove the official decapitation of such incumbents, sure and certain. Granting all this to the weakness of human nature, especially official nature, still it is altogether in bad taste, execrable taste in fact, for such officials to add to their weaknesses gratuitous insults to the people, and gross impertinence to their representatives, undeniable instances of which in this Territory are far from uncommon. It is sufficiently evident that certain of our present Federal officials are gifted with an intensely ugly side to their nature, and it is altogether supererogatory on their part to take such pains to show it, to exhibit it so plumply and persistently to the public gaze, and thereby to favor the Darwinian theory.

THE present appears to be a severe winter, though with extreme variation, over a wide extent of latitude and longitude. The cold came early in the season and very severely in these mountain regions, also over the plains, falling in unwonted showers of rain in California, and being keenly felt through the Eastern States, in the British Isles and on the European continent.

Concerning the cold in Italy in the fore part of the winter, we read the following in an exchange, "Florence is now (Dec. 12) having the coldest weather known for many years. One morning we found the ground covered by from six to seven inches of snow, much to the chagrin and discomfiture of the natives, and ever since the weather has been very cold—quite like our own cold and clear December days—for, although the snow has entirely disappeared from the streets, the gardens and shady places still hold it. Strangers who have come here to escape the cold of winter, growl considerably. Even Naples at this time had a heavy fall of snow, and at the opening of the Italian Parliament at Rome, the members were granted special permission to sit with their hats and overcoats on—the means of heating here being totally inadequate for such unusually severe weather."

Great loss of stock is reported and anticipated in the pasture regions of the great plains eastward. Never before since its opening was the Pacific Railroad so repeatedly and seriously blocked up with snow as it has been the present winter. Just now we have been without our usual mails from the east for several days, and the prospect is not bright for the immediate future. We have just passed through a cold snap as severe as the oldest inhabitant can remember, and the telegraph brings us news of unwonted cold and even snow in the far southern States, as well as in the more northern, also tremendous storms and floods in England and in other European countries.

Notwithstanding all this, the most of the winter in this valley has been almost if not quite unprecedentedly mild. The season is advancing, but there is time enough yet for all the storm and cold that we desire before next summer's heat shall have fairly set in, and so far as stock is concerned the farmers and graziers will do well to look well after it and secure proper provision for its safely, getting through the thick end of winter which seems to be upon us.

Elizabeth Stark, of Lucerne Pa., put out her lamp the last time she went to bed by blowing down the chimney. She is now Stark stiff.

Lace is washed by machinery, by a new method, without friction or hot water, and it is claimed without the slightest injury to the most delicate fabric.