

# THE EVENING NEWS.

PUBLISHED DAILY, SUNDAYS EXCEPTED  
AT FOUR O'CLOCK.

Wednesday, April 8, 1874.

DAVID O. CALDER,  
EDITOR AND PUBLISHER.

## NEWS OF THE DAY.

The celebrated German historical painter Kaulbach is dead of cholera.

The steamer *Egypt*, from New York, arrived at Queenstown last night, having on board part of the rescued crew of the steamer *Europe*, of the French Trans-Atlantic Company's line, which sunk on the Atlantic early this month.

Application has been made to the Home Secretary of England for a new trial for the Tichborne Claimant. Before giving a reply to the request, the Secretary wants to know the grounds upon which the application is based.

In consequence of the lengthy illness of Bismarck, a deputy, it is said, is to be appointed, to perform the duties of the office of Chancellor.

Among the bills introduced in the U. S. Senate yesterday, was one by Logan, to incorporate the First Presbyterian church of Salt Lake City; the bill was referred.

Another defaulter has come to light, this time at Brooklyn; he was secretary of an insurance company, and the amount missing is \$10,000.

The master mechanics and builders of New York have resolved to employ none but ten-hour men, after May 1st.

A boiler explosion at South Bethlehem, last night, killed three men.

The New York Legislature have endorsed the message of Governor Dix against the inflation of the currency by Congress, and have passed resolutions instructing the Senators and Representatives from New York to use all their influence to prevent it.

The U. S. Senate has confirmed Moses Hallet for Chief Justice of Colorado; various military promotions also have been confirmed.

Father Powers, of San Francisco, was convicted in the police court, yesterday, of a brutal assault and battery upon an insane woman, whom he found in church, as mentioned in the telegrams a few days ago.

Eldridge M. Hopkins has been arrested for the murder of Fahy, who was shot in a San Francisco saloon, yesterday morning.

The total wreck of the British ship *Durham* is reported in the western telegrams to-day. The captain of the *Durham*, with eight of the crew, left the wreck and reached Tahiti, in an open boat, whence a vessel was dispatched to rescue the rest of the crew from the wreck. No lives were lost.

Another murder and suicide occurred in San Francisco this morning; the murderer shot his victim through the head, and himself in the region of the heart.

A London dispatch of to-day's date, says the sovereignty of the Fiji Islands has been tendered to Great Britain.

The proceedings in bankruptcy against the Sprague Manufacturing Company, were discontinued this morning.

The Episcopal church at Worcester, Mass., was burned last night; loss \$30,000.

Dooney Harris, a pugilist well known in sporting circles East, was, it is supposed, fatally shot, in a quarrel in a saloon in New York this morning.

In the U. S. Senate, to-day, a bill was introduced and referred, asking for the appointment of a delegation, to visit the Indian tribes and to devise means for improving their condition.

Telegrams received late this afternoon say that the *Europe*, was one of the finest ships in the fleet of the Trans-Atlantic Company; that she was commanded by an experienced captain, was worth a million and a quarter dollars, and insured for two-thirds of that amount, and that her cargo was worth a million. The cause of her leakage was not thoroughly understood, and that she had to be abandoned because her pumps were choked.

The residence of a widow, living at Evansville, Indiana, was burned early this morning, and she and her son, a boy of thirteen, were suffocated.

## THE TERRITORIAL MARSHALSHIP AND ATTORNEY-GENERALSHIP.

As stated in a dispatch in the News of April 6, the current term of the First District Court, Associate Justice Emerson presiding, opened on that day, at Provo.

O. F. Strickland claimed to be Territorial Attorney-General, and A. K. Smith Deputy Territorial Marshal. Strickland presented a commission from Governor Woods to that effect, but had no claim to confirmation by the Legislature.

J. D. T. McAllister also claimed to be Territorial Marshal. He had no recent commission, Governor Woods having refused to commission him, but McAllister had been elected to that office by different Legislatures of the Territory, had been commissioned by a previous Governor, and had acted year after year in the office.

In another part of to-day's News will be found the decision of Judge Emerson upon the question. It will be seen that he takes obvious and positive ground in favor of the persons elected by the Legislature. The reasoning of his honor is plain and simple, being to the effect that, upon the subject, the individuals elected by the Legislature were the only persons that could have any legal and rightful claim to the offices named.

## PLENTY OF MONEY.

MANY people are well satisfied that there is not enough money in the country, hence the urged action of Congress to extend the issue of greenbacks to \$400,000,000. Other people, however, think there is too much money in the country, or at least that there is an abundance, but that the great difficulty is that it is so unequally distributed that while one part of the community is afflicted with financial prostration, another part is afflicted with financial plethora.

In a late issue the *Denver Journal of Commerce* talks of the plenty of money, in places, in this wise:

"The general statement of the banks all over the country is that there is a glut of money; more than can be advantageously used. Not that there are no persons who need it, for there are, but that the money is in the hands of the few, and that there is a surplus for all legitimate business purposes. By referring to the financial reports of the newspapers we find ample proof of this. The report from New York of a week since was: 'Money easy at three and four per cent. From Philadelphia we get this report: The demand for money is so limited for business purposes that lenders hardly know what to do with their balances. Call loans were offered freely at five per cent; time loans on collateral at the same figure, and mercantile paper at six per cent. a rate.' The Chicago papers report that the supply of loanable funds continues abundant. At the banks the rate is nominally maintained at 10 per cent, although some of them are offering money at 8 per cent. In the money market the supply is even greater than at the banks, and 8 per cent. is all that is asked. A good many of the country banks are offering large sums through brokers here at 9 per cent. for three and even four months' loans, on prime collaterals, though the brokers say they cannot find employment for it at over 8 per cent. The Cincinnati papers of the same time report: 'The demand for money has been light all through the week, and the banks have discounted freely at 8 and 9 per cent. without any effort to keep their discount lines as full as they desire.' The St. Louis report says: 'Money continues to be held in great abundance by the banks, and under the light demand for discounts is steadily increasing.' 'This abundance of money is not limited to the large cities; it extends to the country, where it is also held in great abundance, which also has more money than they can find use for, as is proved by their sending it to brokers in the cities to be loaned at 8 per cent.'

The *Journal* is opposed to inflation and says the only proper way for the impecunious to obtain money, if they really want it, is to work for it, borrow it, or buy it with merchandise or other property. Money can be obtained by a "voluntary grab," a "back pay steal," or other methods of official manipulation, or other kinds of stealing, but these ways are not considered commendable.

The *Journal* further says—

"A person can get money, get all he wants, by returning an equivalent; but money, as well as other valuables, can only be obtained by such a process. The country is suffering from a lack of money, rather than a lack of money. The supply is abundant, but there is a lack of trade to call it into use. The surplus in the hands of the few of the country are now held in doing more injury to our commerce and industries than anything else."

That it. Don't be so long and so frequently pottering at financial legislation, disturbing the business relations of the country, and holding the people in suspense. But rather do all that can be done to give steadiness and stability to commerce and manufactures, so that confidence may abound, labor be employed, wealth distributed, and conveniences brought more uniformly within reach of the people at large.

## INDIAN WAR CLAIMS.

THE NEW YORK *Tribune* has the following upon a subject of considerable interest to the Territories:

"An Indian war is a far more expensive affair than most people imagine. After the Government has paid all the bills for transportation of troops to the scene of disturbance and for the purchase of the extra supplies required, the account is by no means closed. The claims of the people living in the vicinity of the hostile tribe must be adjusted, and it usually turns out that every man, woman and child has a claim for some loss or injury, or even for a few days or a week of sleep over night, makes a demand proportionate to the exaggerated estimate he sets upon the value of his services. If it would seem to be the duty of good citizens to protect their homes against an enemy without expecting to be paid by the government for doing it, but the frontiersmen do not appear to think so, or perhaps it is the claim agents and speculators who induce them to demand compensation. A number of these Indian war claims are now pending in Congress. The Montana claim was disposed of last session by the payment of large amounts of money. A similar one from Dakota, and a very large one from Utah, are waiting action; but these Territorial claims, although of older date, must stand aside until California and Oregon, which as States, have more influence in Congress, get the heavy demands paid which grew out of the Mexican war. The House has passed a bill authorizing the Secretary of War to ascertain the amount of these claims, and report them to Congress at its next session."

ANOTHER MARSHAL INVESTIGATION.—Funds of a serious character are reported to have been discovered in connection with the office of the United States Marshal for the Southern District of Illinois. A committee of Congress is investigating the matter. Colonel Edward H. Roe, of Bloomington, is the United States Marshal for that district, and his office is at Springfield.

## THE TERRITORIAL MARSHALSHIP.

OPINION OF ASSOCIATE JUSTICE P. H. EMERSON.

Delivered in the First Judicial District Court, at Provo, April 6th, 1874.

Two persons present themselves to this Court, claiming to be recognized as the Territorial Marshal. One presents a commission from the Governor of this Territory, appointing him to that office, to fill a vacancy, and bearing date March 3rd, 1874, some days after the final adjournment of the Territorial Legislature.

The other presents a certificate of election, duly certifying that, on the 20th day of February, A. D. 1874, by a vote of the people of the Territory, he was elected to the office of Territorial Marshal. This action of the Legislature was taken in pursuance of the Territorial Act approved February 4th, 1852, creating the office and providing the manner in which it should be filled.

Both parties claim to have taken the oath of office and filed the necessary bonds. It is not only important that the Court should arrive at a correct conclusion, if it is possible, in this matter, but that, whatever the conclusion may be, it should do so at once; that the business of the Court may proceed without unnecessary delay, and that there may be at least an officer de facto recognized by the Court, to serve process and execute its orders.

An officer derives his right to an office from his election or appointment, and his commission is simply evidence of his title. When he has been fairly and legally elected, his right at once becomes absolute. The right of the person claiming under the appointment of the Governor alone, depends upon whether there was a vacancy or not, and if a vacancy, such a one as could be filled by Executive appointment.

The Legislature by a joint vote having elected another person than the one appointed by the Governor, to the office of Territorial Marshal, and that person having complied with the requirements of the Act, as to qualifications and oaths, there can be no vacancy in the office, if that portion of the Act authorizing such a proceeding on the part of the Legislative Assembly is valid.

It must be claimed, on the part of the person basing his right to the office upon his appointment and commission by the Governor, that the Act referred to is valid, except so far as it points out the manner of filling the office, and as to that, that it is unconstitutional or opposed to the provisions of some other part of the Organic Act, and within the power given to the Legislative Assembly by section six of the Act, and therefore void.

The Act, in its very first section, and starts out with this declaration: "That a Marshal shall be elected by a joint vote of both houses of the Legislative Assembly, whose term of office shall be four years, and he shall give him certain powers and defines his duties."

The manner of selecting the incumbent is thus imperatively prescribed, and the creation of the office, and if that is void the whole Act is void, and there is no such office or official as Territorial Marshal. There is not a provision or intimation anywhere in the Act itself, that, if the Legislative Assembly has not the power to select the incumbent in the manner provided, it should exist anywhere else. The Legislative intent in the manner of filling the office is plain, and cannot be evaded by the creation of the office. From the wording of the Act I must conclude that they would not have passed it with a provision that the office thus created should be filled in any other manner than that which is prescribed in the Act itself.

It is true, that a statute may sometimes be held void in part, and valid as to the remainder, but this can never be done without the most manifest usurpation of Legislative authority, except where the Court on an inspection of the whole statute can satisfy itself that it is enforcing a Legislative intention in so doing. It can never so hold, without the most manifest usurpation of power, when it is plain that to do so would defeat the Legislative intent.

No court is at liberty to split legislation into fragments, and arbitrarily, from its own notions of what the law ought to be, give effect to one fragment, to the rejection of the rest. The Court cannot do this, if, when a void part of a statute is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the legislative intent, wholly independent of that which was rejected, then it may be sustained. Applying this rule to the present case, if the portion of the Act providing for the manner of filling this office is void, then the whole Act is void, for the balance cannot be executed according to the legislative intent.

Is this portion of the Act void? The same rule must be applied in construing Acts of the Territorial Legislature as in construing Acts of any other law-making body. It is a settled doctrine that no act of the Legislature can be declared void, unless it conflicts with some express provision of the constitution, and the Court must be able to point out the provision. An Act of the Legislature cannot be declared void unless it is plainly unconstitutional. The power of the Legislature is limited, within certain constitutional limits, and its acts are to be regarded as *prima facie* constitutional.

The question is one of legislative power, and not of the wisdom, or even of the justice of the law, in which that power, if it exist, has been exercised.

With the Court will declare that Legislative power can only be exercised within the limits prescribed by the fundamental law, it is equally bound to keep within the sphere allowed to it by the same instrument. To do otherwise would be to arrogate the power of making the fundamental law what the Court may think ought to be, instead of simply declaring what it is.

With these fundamental doctrines in mind, can we say that this statute is in conflict with the Organic Act?

But whatever may be the opinion I may have upon the subject, I am bound by the decision of the National Supreme Court. The Organic Act has been before that Court and has been declared valid. I refer to the case of *Snow vs. the United States ex rel. Hemphill*, a recent case not yet reported. Snow was elected to the office of Attorney-General by a joint vote of the Territorial Assembly, under section 4 of this Act, and the National Supreme Court established his right to the office.

In rendering that decision the Court says: "That the power given to the Legislature is extremely broad. It extends to all rightful subjects of legislation consistent with the Constitution and the Organic Act itself. And there seems to be nothing in either of these instruments which gives ground for an inconsistency at all, it is in that part of the Organic Act which provides for the appointment by the Court may think ought to be, instead of simply declaring what it is."

So with the portion of the Act now under consideration. If there is any inconsistency at all, it is in that part of the Organic Act which provides for the appointment by the President of a Marshal for the Territory. It is not inconsistent in the manner in which the incumbent is selected by the Territorial law.

The Supreme Court say further, "But it is not necessary an inconsistency. The power of the Legislature as relating to cases in which the government is concerned, and the separation of the business of the Courts as to Government and Territorial cases, seem to give some countenance to this idea. At all events, it has sufficient basis for its support to establish the conclusion that there is no necessary conflict between the Organic and Territorial Acts. The Organic Act is susceptible of a construction that will avoid such conflict, and that construction is supported by long usage in this and other Territories. Under these circumstances it is the duty of the court to adopt it, and to declare the Territorial Act valid.—*Provo Times*."

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## READ City ordinance concerning licenses for selling meat.

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Will be presented, the Tragic play

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SONGS AND DANCES  
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