

distribution of the laws and journals of the 12th annual session.

These acts and many others, including the Territorial Appropriation bill, were snugly stowed away in the capacious pocket of the Governor, without his Excellency even deigning to descend from the lofty pinnacle of executive dignity, to communicate the reasons to the Legislature, why he withheld his "Royal Sanction." They were not unconstitutional. No one can pretend this. They were not hastily or imprudently passed. They were demanded by the people. The Governor stood pledged to co-operate with the Legislature, in promoting the general prosperity, as the Executive branch, in the enactment of wholesome and proper laws; still strange to say, the labor and expense of nearly the entire session were lost; twenty thousand dollars of the public money wasted and the people cheated and deprived of merited legislation, by the obstinate refusal of the Executive to award his signature.

Only three comparatively unimportant acts, two resolutions, and one memorial, are all that can be found among the archives, with his approval, to perpetuate his memory.

One is an act for the regulation of the telegraph; another assigning the two Associate Judges to their districts; another changing the County seat of Washington County; two resolutions adjourning and convening the Legislative Assembly and a memorial to Congress. These were the only ones that received "Executive clemency."

In place of that harmony which should exist between the Legislative and Executive branches of government, congenial in their intentions and action, to promote the general welfare, as they should ever be, we here find the Executive thwarting Legislation, destitute even of the usual courtesy of returning the bills with the reasons for withholding his signature.

But we will dismiss this part of our presentment without farther comment, and pass to another power conferred upon the Governor by the Organic Act, which he has exercised with a wanton recklessness unprecedented in Executive history. We refer to the pardoning power. This, like the veto power, is also a high prerogative; a dangerous one in the hands of a bad man, and if corruptly or even imprudently exercised, it is subversive of the ends of civil government.

In America, the judiciary has ever been regarded the purest branch of the government, as it is the most important and responsible. To this branch is confided the dearest rights of the citizen, his life, liberty and property. It is only by enforcing the law, maintaining the authority of the Court, and meting out merited punishment to the guilty who violate the law, that security and protection are afforded. The solemn and deliberate judgment of a Judicial Tribunal is entitled to great consideration, and a wise, honest man, will seldom interfere by the exercise of Executive clemency, tending as it does, to abrogate and defy this the most useful branch of the government.

When the power is exercised, it is only after the convict has suffered a part of his punishment; and not then, unless the punishment is excessive, or the prisoner has exhibited such contrition and penitence as give evidence of reformation. In no case, as a general rule, will the Executive feel authorized to interpose his clemency without a petition signed by most, or all of the jury, Prosecuting Attorney and Judge, as they are supposed to be familiar with the facts, and the aggravated, or extenuating circumstances of the crime. But the wholesale pardon of some seventy-five men from the punishment of the law by his Excellency a few days since, before those sentenced to the Penitentiary had time to become familiar with even the walls of their abiding place, was not based upon any such petition, as not a juror or officer of the court signed the same.

We trust the Court will pardon the Grand Jury for briefly referring to the facts connected with the arrest and trial of the men the Governor has seen proper, in such hot haste, to pardon and turn loose upon the community.

They are as follows: On the 22d day of May, A. D. 1862, a petition was filed before Hon. John F. Kinney, the Judge of the Third Judicial District, for a writ of *habeas corpus*, alleging that three men were unlawfully imprisoned at South Weber, in Davis county, and kept in close confinement, heavily ironed, without any process or authority of law. It may be well to state that, at the place mentioned in the petition, a body of some two hundred men with their families had congregated in what is known as Kingston Fort, and for more than a year had remained without cultivating the soil or following any industrial pursuit. What little property they had was owned in common, and this from time to time was disposed of to procure the bare necessities of life.

At this place and by these men were the prisoners confined (mentioned in the petition) for the writ of *habeas corpus*. The writ was issued and served upon those who had the prisoners in custody, on the 24th day of May. No attention was paid to it by the defendants. The authority of the Court was openly contemned and placed at defiance. Judge Kinney, after waiting for the defendants to produce the prisoners from the 24th day of May till the 11th day of June (some eighteen days) issued upon another affidavit a writ for false imprisonment, another writ of *habeas corpus*, and a writ for contempt for disobedience to the first writ. These writs were placed in the hands of the Territorial Marshal, who being well advised that armed resistance would

be made to the service of any process in said fort, called upon Acting Governor Fuller, who furnished the officer with a military posse to enable him to execute the mandates of the Court. On the morning of the 13th day of June, the Marshal with his posse arrived near the fort and sent the following proclamation under a flag, which was received and read by Banks and others, the parties named in said writs, and to whom said proclamation was directed:

"HEADQUARTERS, MARSHAL'S POSSE, }  
Weber River, June 13, 1862. }

To Joseph Morris, John Banks, Richard Cook, John Parsons and Peter Klemgard:

Whereas, you have heretofore disregarded and defied the judicial officers and laws of the Territory of Utah; and whereas, certain writs have been issued for you from the Third Judicial District court of said Territory, and a sufficient force furnished by the Executive of the same to enforce the law: This is therefore to notify you to peaceably and quietly surrender yourselves and the prisoners in your custody forthwith.

An answer is required in thirty minutes after the receipt of this document; if not, forcible measures will be taken for your arrest.

Should you disregard this proposition and place your lives in jeopardy, you are hereby required to remove your women and children; and all persons peaceably disposed are hereby notified to forthwith leave your encampment, and are informed by this proclamation that they can find protection with this posse.

H. W. LAWRENCE, Territorial Marshal.  
pr. R. T. BURTON and  
THEODORE MCKEAN, Deputies."

This was unheeded and disregarded. Addition al time was given after the expiration of the thirty minutes for the delivery of the persons called for by the writ; still no attention was paid to the demands of the officer. At length fire was opened and for three days, almost continuously, did the belligerents within the fort keep up a fire on the marshal and his posse, killing on the first day a man by the name of Jared Smith, and on the third day another man attached to the Marshal's posse. On the evening of the 15th the rebellion was subdued by the surrender of the men, and one hundred stand of arms. Parties upon both sides had been killed in consequence of the defiant position taken against the enforcement of the law, and in defending the position thus unlawfully assumed by more than one hundred well-armed men.

The disloyal men thus found in arms, fighting against the service of process, were taken prisoners, brought before Judge Kinney, in chambers, who admitted all but two to bail for their appearance at the next March term of Court—said two being committed to await their trial for murder. At the recent sitting of the Territorial Court, Judge Kinney presiding, some ninety or more were indicted under the statute for resisting the officer, and ten of the principal men for the murder of Jared Smith, who was shot dead on the first day of the resistance. Sixty-six appeared and were tried for resisting the officer, the others having left the country. After a long, patient and entirely satisfactory trial to the defendants, the jury assessed a fine of one hundred dollars against each of them—the lowest sum allowed by the statute and when the law authorized them to fine not exceeding one thousand dollars and imprison not exceeding one year. The least punishment allowed by the statute was meted out to the prisoners, and that, too, when the testimony of their guilt was overwhelming. Of the ten indicted for murder, one was *noted*, two acquitted and seven convicted of murder in the second degree. The punishment for murder in the second degree is imprisonment not less than ten years and may be during natural life; still the jury, actuated by feelings of humanity and mercy, affixed the punishment of five of the prisoners to imprisonment for the period of ten years each, one for twelve and one for fifteen years.

Such are briefly the facts of a formidable armed resistance of a body of men against the authority of the law, their trial, conviction and sentence.

We will be excused for remarking that the very existence of our government depends up, on the maintenance of its authority. This ever surrendered, or if it becomes powerless, all the departments are weakened—totter and crumble into decay. To maintain and uphold this vital principle, the Federal Government has "sundered to arms," and blood and treasure have been offered as a willing oblation. Treason and rebellion may be exhibited in Territories as well as States. Both were manifested by the armed resistance in Davis County to the supremacy of the law—small in comparison to the gigantic proportions of the Southern rebellion, but at the same time the principle involved is the same; and when such rebellion is subdued, punishment by the Court is but retributive justice; but, the Governor, clothed with the pardoning power, interposes to prevent the punishment due to rebels against the law. He sanctions and sustains their rebellion and, by pardoning them, proclaims to the world that they have acted rightly, wisely and lawfully. No time is allowed for investigation, none for repentance or reformation; but in less than three days from the time of the sentence of the Court, are all of them pardoned by the Executive, to renew their armed resistance against the power of the Government—a pardon which not only seeks to release them from fine and punishment, but the costs due to the officers and

witnesses. Of what avail are Courts when their most solemn and deliberative judgments can be thus summarily ignored and set aside? Punishment becomes a mockery, the door is thrown wide open for crime, convicts have only to appeal to Executive clemency, and security to life, liberty and property exists but in name.

Therefore, we the United States Grand Jury for the Third Judicial District for the Territory of Utah, present his "Excellency" Stephen S. Harding, Governor of Utah, as we would an unsafe bridge over a dangerous stream—jeopardizing the lives of all who pass over it, or, as we would a pestiferous cesspool in our district, breeding disease and death.

Believing him to be an officer dangerous to the peace and prosperity of this Territory; refusing, as he has, his assent to wholesome and needed legislation; treating nearly all the Legislative acts with contumely; and last of all, as the crowning triumph of his inglorious career, turning loose upon the community a large number of convicted criminals.

We cannot do less than present his Excellency as not only a dangerous man, but also as one unworthy the confidence and respect of a free and enlightened people.

All of which is respectfully submitted.

George A. Smith,  
Franklin D. Richards,  
Elias Smith,  
William S. Muir,  
Samuel F. Atwood,  
Philip Margitts,  
John Rowberry,  
Claudius V. Spencer,  
Charles J. Thomas,  
John W. Myers,  
Alfred Cordon,  
George W. Ward,  
Horace Gibbs,  
Lewis A. West,  
Leonard G. Rice,  
Isaac Brockbank,  
George W. Bryan,  
James Bond,  
John B. Kelly,  
Gustavus Williams,  
Wells Smith,  
John D. T. McAllister,  
Andrew Cunningham.

His Honor directed, that in accordance with the request, they be spread upon the records of the court.

The foreman of the Grand Jury then stated that they had concluded their labors, and had no further business before them, whereupon the Judge addressed them as follows:

Gentlemen of the Grand Jury:

The paper just read by the clerk, is one of great responsibility, presenting the Governor of this Territory as unworthy the confidence and respect of the people.

I trust you have fully considered the importance of the step which you as a Grand Jury have felt called upon, under the oaths of your office, to take.

I am well persuaded that in no spirit of malice or undue prejudice have you been induced to call the attention of the Court and people to what you regard as the official misconduct of the Executive, but only as the deliberate result of your investigations for the public good.

I am perfectly familiar with the facts referred to by you in relation to the armed resistance to the law in the service of process. Upon affidavit made before me were the writs issued, the service of which was attempted to be resisted by an armed rebellion.

The trial of men thus found in arms very recently took place in the Court over which I have the honor to preside, and the trial, as you state, was conducted with deliberation, and the verdict of the jury in each of the cases for resisting the officer and for murder were such as met with the approval of the Court.

The law and its authority were fully vindicated by the verdicts, but, as you state, the Governor has granted an unconditional pardon.

What effect this may have upon the minds of evil disposed persons I know not, but leave the responsibility where it belongs, with the Governor, who, in the exercise of a naked power, has seen proper to grant executive clemency.

You have now, as you state, concluded your labors and before discharging you I desire to tender to you the commendations of the Court for your attention and diligence in the discharge of your duties.

Your labors have resulted in the presentation of a number of indictments for crime—some of the prisoners charged by you having been tried and convicted, and others are awaiting their trial.

It is only by a Grand Jury discharging their duty faithfully and fearlessly that crime can be suppressed, and offenders punished, for all persons must pass the ordeal of your body, before they can be introduced by the Government into this Court for trial and punishment.

It is possible, and highly probable, that this is the last Court over which I shall have the honor to preside in your Territory. Such are the indications. I have been the Chief Justice of the Supreme Court of Utah, and Judge of this district most of the time since 1854—having come among you as a ranger, but I was treated with kindness, and my authority with consideration and respect.

Appointed by Mr. Pierce in 1853 and reappointed in 1860 by Mr. Buchanan and continued in office by Mr. Lincoln, and having held many courts, tried many cases, both civil and criminal, of an important character,

I am happy in being able to state that I have found no difficulty in Utah in administering the law, except where its administration has been thwarted by Executive interference.

Let honesty, impartiality and ability be the characteristic qualifications of the Judge, and a fearless discharge of duty, and he will be as much respected in this Territory, and his decisions as much honored, as in any State or Territory in the Union. And to use an odious distinction, attempted to be made between "Mormon" and "Gentile," I am also happy in being able to state, that while these parties differing so widely as they do in their religious faith, have been suitors in my Court, the so called Gentile, has obtained justice from the verdict of a so called "Mormon" Jury.

I repeat Gentlemen, that the law is, and can be maintained in this Territory, and that there is more vigilance here in arresting and bringing criminals to trial and punishment, than in any country where I have ever resided.

In the discharge of my Judicial duties, I have endeavored to be actuated by a sense of the responsibility of my position; ever keeping constantly in mind that I was among a civilized and enlightened people, who were entitled to the same consideration from the Court, as the people of any other Territory; and that the Court here as elsewhere, should be free from bias and prejudice.

Gentlemen, accept my thanks for your co-operation, in support of my efforts to maintain and enforce the law.

To the Petit Jurors I will say, that I have been well sustained by them in the trial of cases, and can only hope, that when I retire from the Bench, my successor will be an able, honest Judge, and have no more difficulty in discharging his duties than I have had.

With these remarks, Gentlemen, I dismiss you from further attendance upon the Court.

On the discharge of the Grand Jury, the case of the United States, vs. Curley and Wah-pa-nah, Indians, was called, and the following jury were empanelled to try the case:

John V. Long, Daniel M. Burbank, Hiram B. Clemons, George D. Grant, Wm. A. McMaster, William Calder, Elijah F. Sheels, George Nebeker, John Scott, Robert J. Golding, Millen Atwood and Isaac Groo.

Dimick B. Huntingdon was sworn as interpreter.

Mr. Merner presented the case to the jury by reading the indictment. Mr. Ferguson briefly responded, after which John Lowry, Elias Demitt and —Edwards were sworn, and testified on the part of the prosecution; the case was submitted to the jury by the attorneys. The jury were charged by the Court, after which they retired, and in fifteen minutes returned into court, and rendered a verdict of NOT GUILTY. The prisoners were then discharged. Mr. Ferguson moved, that as the Grand Jury were discharged without finding an indictment against Brigham Young, that he be discharged from his recognizance.

Court adjourned till Tuesday, at 11 a.m.

Tuesday, April 14.

James Talbott was arraigned on an indictment for perjury, and plead not guilty.

Mr. Appleby, counsel for the defendant, stated he could not safely go to trial without a certain witness, a Mr. Rogers, who was now at Fort Crittenden, and he therefore wished a continuance until Wednesday (to-day) at ten a.m., which was granted.

Matthew Lyon and Jonas N. Beck were then made citizens of the United States.

Court adjourned till to-day at 10 a.m.

#### A HEAVY SNOW STORM.

The winds which prevailed most of the time during Monday, Tuesday and Wednesday of last week were followed on Thursday the 9th, by a heavy snow storm, which commenced here about four o'clock in the afternoon, and continued till about nine o'clock next morning, during which time, about eight inches of snow fell, according to estimate, as much of it dissolved before the storm abated. At daylight on the morning of the 10th, the snow was from four to six inches on the ground, and fruit, shade and ornamental trees were thickly shrouded, and bent down with the weight of the accumulation of crystalized vapor on their boughs. The sun shone out warmly after the storm subsided, and most of the snow disappeared in and about the city before night fall, excepting upon roofs and where shaded. There was a severe frost on Friday night, doing much damage to fruit trees in low and exposed locations, but orchards on bench or uplands were not materially injured.

The storm in the northern part of Davis and in Weber and Box Elder Counties was, as reported, much more severe than in Great Salt Lake, the snow falling to the depth of a foot or more, but it did not commence at Ogden so soon by several hours as it did here, although the wind blew heavily from the north, and the storm appeared to come from that direction.

LARGE PIEPLANT.—Mr. Thomas Fenton placed upon our table a few days since, a nice bunch of Pieplant grown in the open air, in his garden, in the Sixth Ward, without any artificial culture. It was the largest yet seen this season, and truly was excellent.