Important Decision.

Delivered by Judge Servis at the March Term of the District Court at Radersburg, M. T.

R. W. Jeffries vs. D. V. Sherman and E. H. Wilson.

This case is submitted upon motion to make R. Packer a party, which is granted. Also a demurrer to complaint, for the following grounds or causes:

1st—For a misjoinder of causes of action.

2nd—Joinder, or blending of law and equity.

3rd—Want of sufficient facts stated.

4th—Ambiguity of pleadings.

If the laws and Practice Act of this Territory shall prevail, I hold that the complaint is sufficient, and that in foreclosing a mortgage the amount claimed, for which the security given is sought to be foreclosed or enforced, may be ascertained by the court, and perhaps through the intervention of a jury or referee if demanded. That for any balance which may remain unsatisfied from such security, the amount thereof may be docketed and become a lien on other real estate of the mortgagor, but that no execution can issue thereon under the present law. But if the Chancery practice shall prevail, then no such proceedings can be had as in this case, and the demurrer should be sustained. To determine which, we must determine the character of Territorial courts, and also the legality or constitutionality of Territorial legislation.

The theory upon which the various governments for portions of the United States have been organized has ever been that of leaving to the inhabitants all the powers of self-government, consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress. Every American citizen, when he becomes a resident of a Territory, carries with him so much of the common law as is applicable to his condition, and that becomes the law of the Territory until modified or repealed by or under some authority derived from the United States. Such was the doctrine applied to the English colonies on this continent, and the same has been applied to all the Territories of the United States since.

I have heretofore somewhat reflected upon the question presented by this demurrer; and since its able presentation and defense, I have given the subject what research and thought I well could here; and I hold that there is no *Supreme Court of the United States* in a Territory, nor is there any *District Court* of the United States in a Territory in the sense of the Constitution. The Judges, it is true, are appointed by the President of the United States, under an act of Congress, but this does not make the courts they are authorized to hold, United States courts. This was long long ago decided, and the case is reported in 9 Howard's U. S. Reports.

These courts are the legislative courts of the Territory, and are created by virtue of that clause of the Constitution, which authorizes Congress to make all needful rules and regulations respecting the Territories belonging to the United States. This was decided in the 1st of Peters' reports, and has never been reversed in my judgment.

The case of Noonan, *vs.* Lee (decided in 2d Black,) is not in conflict with the decision in the 1st Peters. That was a case commenced in a Territorial court it is true; nevertheless, it was the chancery power of the court that was invoked in that case; and that too, before the adoption of rule 92 of the United States Supreme Court, originating as it did from the holdings in the case of Orchard *vs.* Hughes, where no execution could issue for any balance found due after exhausting the mortgage security, and for that reason alone was the Noonan case reversed. The court, then, did not decide that the "District Courts in a Territory were United States Courts in all cases except where chancery is invoked, the rules in chancery practice must be observed."

Neither is the holding in the case of Durphy *vs.* Kleinschmidt in conflict with this view. The court in that case did not hold "that it was incompetent for the Territorial Legislature to establish chancery practice." It only held in that regard, that the Territorial Legislature had no power to pass laws in contravention of the Constitution of the United States (and I would enquire what Legislative body has?) or which shall deprive the Supreme and District Courts of a Territory of chancery as well as common law jurisdiction. In none of the cases above referred to is the Legislature prohibited from regulating the practice. They simply prohibit the Legislature from taking away and annulling chancery and common law jurisdiction. This is just what the Organic Act of this Territory expressly reserved to the United States—and nothing more. It did not prohibit the Territorial Legislature from even prescribing modes of exercising that jurisdiction, except it be in cases where the laws of the United States are sought to be enforced under chancery and common law jurisdiction.

Four distinct jurisdictions are given under the Organic Act of the Territory of Montana and they are: First; "Such as shall be limited by law." What law? Why the law of the Territory.

Second and third; "It shall possess *chancery* as well as *common law* jurisdiction."

Fourth; "And each of said courts (referring to the District Courts of the Territory) 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 District and Circuit Courts of the United States." And it further provides that the first six days of every term of said courts (if necessary) shall be appropriated to the trial of causes arising under the Constitution and laws of the United States; and when Chief Justice Marshal held that none of these Territorial Courts were Constitutional courts, in which the judicial powers conferred by the Constitution on the general government could be deposited, he not only held right, but that holding has never been reversed. The jurisdiction with which these courts were clothed is not a part of that judicial power which is defined in the third article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the Territories of the United States.

It cannot but be readily seen by a careful examination of the organic act of this Territory, that Congress, while delegating to it chancery and common law and such other jurisdiction as the Territorial Legislature might limit, (of course not inconsistent with the Constitution of the United States,) did not attempt to prescribe the mode of practice for either of these jurisdictions; while in the *last* jurisdiction therein given, or retained, it did. For it provides: "That said courts (*i.e.* wherein the United States invokes aid or jurisdiction) 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 District and Circuit Courts of the United States," and it gives that jurisdiction preference over all other jurisdictions for the first six days of each term. Evidently leaving all else to be regulated by Territorial legislation and the rules of Territorial courts.

For these and many other reasons that might be assigned, I hold that the laws and practice act of this Territory must prevail in the case at bar—and in all other cases of a similar character. And this holding I think is fully sustained in the case of Clinton *vs.* Englebrecht in 13 Wallace.

The demurrer will therefore be overruled.—*Bozeman Avant Courier.*

PRESIDING ELDERS AND BISHOPS

Of the Church of Jesus Christ of Latter-day Saints, in Utah Territory and adjacent Settlements.

Bennington, J. W. Moore, Oneida co., Idaho
Georgetown, Henry Lewis, " "
Montpelier, John Cozzens, " "
Ovid, N. C. Edlefsen, " "
Liberty, E. N. Austin, " "
Paris, H. N. Horne, " "
Bloomington, George Osmond, " "
St. Charles, John A. Hunt, " "
Fish Haven, Hugh Findlay, " "
Lake Town, alias Ithaca, Ira Nebeker, Rich co., Utah
Meadowville, Josiah Tufts, " "
Randolph, Randolph Stewart, " "
Woodruff, Henry Lee, " "
Almy, Samuel Pike, Wyoming Territory.

WILLIAM BUDGE is Presiding Bishop over the above Wards.

Oxford, George Lake, Oneida co., Idaho
Clifton, Wm. Pratt, " "
Bridgeport, N. W. Packer, " "
Franklin, L. H. Hatch, " "
Weston, John Maughan, Cache co., Utah
Clarkston, Simon Smith, " "
Newton, W. F. Littlewood, " "
Lewiston, W. C. Lewis, " "
Richmond, M. W. Merrill, " "
Smithfield, Samuel Roskelly, " "
Hyde Park, Wm. Hyde, " "
*Logan, W. B. Preston, " "
Providence, M. D. Hammond, " "
Millville, G. O. Pitkin, " "
Hyrum, O. N. Liljenquist, " "
Paradise, David James, " "
Wellsville, Wm. Maughan, " "
Mendon, Henry Hughes, " "

WM. B. PRESTON is Presiding Bishop over the foregoing eighteen Wards.

*Malad City, Daniel Daniels, Oneida co., Idaho
Samaria, Samuel Williams, " "

DANIEL DANIELS, Presiding Bishop over the two last named places.

Portage, O. C. Hoskins, Box Elder co., Utah
Deweyville, J. C. Dewey, " "
Calls Fort, Thomas Harper, " "
Bear River City, Wm. Neeley, " "
Mantua, H. P. Jensen, " "
*Brigham City, Alvin Nichols, " "

A. NICHOLS, Presiding Bishop over the six last named Wards.

Willard City, G. W. Ward.

WEBER COUNTY, UTAH.

L. J. HERRICK, Presiding Bp.

*Ogden, L. J. Herrick.
North Ogden, Henry Holmes.
Plain City, L. W. Shurtliff.
Mound Fort, David Moore.
Lynne, Robert E. Baird.
Slaterville, Thomas Richardson.
Harrisville, David Rawson.
Marriat, S. P. Halverston.
West Weber, John I. Hart.
East Weber, A. Spaulding.
South Weber, John Cook.
River Dale, Sanford Bingham.
Eden, Richard Ballantyne.
Huntsville, F. A. Hammond.
Hooperville, Gilbert Belnap.

DAVIS COUNTY.

Kaysville, Christopher Layton.
*Farmington, John W. Hess.
Centreville, Wm. R. Smith.
Bountiful, John Stoker.

MORGAN COUNTY.

Mountain Green, Eli Spaulding.
Weber City, C. S. Peterson.
Enterprise, Jesse Haven.

C. S. PETERSON is Presiding Bishop over the three last named Wards.

Milton, L. P. Christiansen.
Littleton, W. G. Smith.
Richville, John Seaman.
Porterville, Alma Porter.
*Morgan City, Richard Fry.
Round Valley, Samuel Carter.

W. G. SMITH is Presiding Bishop over the six last named places.

Croyden, Ephraim Swann.

SUMMIT COUNTY.

Henneferville, Chas. Richens.
Echo, Elias Asper.
*Coalville, W. W. Cluff.
Unionville, Alonzo Winters.

WM. W. CLUFF presides over Morgan County and the above four Wards in Summit Co.

Wanship, G. G. Snyder.
Rockport, Edwin Bryant.
Peoa, Abraham Marchant.
Morell, John K. Lemon.
Kamas, W. Harder.
Parley's Park, Ephraim Snyder.

SAMUEL F. ATWOOD, Presiding Bishop over the above six Wards.

WASATCH COUNTY.

ABRAHAM HATCH, Presiding Bishop.

*Heber City, Abraham Hatch.
Midway, Henry S. Alexander.
Charleston, John Watkins.
Wallsburgh, Wm. E. Nuttall.

SALT LAKE COUNTY.

(Capitol of Ter. and co. seat S. L. Co.)

1st Ward, S. L. City, Jos. Warburton.
2d " James Leach.
3d " Jacob Weiler.
4th " Thomas Jenkins.
5th & 6th, W. H. Hickenlooper.
7th " Wm. Thorn.
8th " E. F. Sheets.
9th " S. A. Woolley.
10th " John Proctor.
11th " Alex. McRae.
12th " L. W. Hardy.
13th " E. D. Woolley.
14th " Thomas Taylor.
15th " R. T. Burton.
16th " Frederick Kesler.
17th " Nathan Davis.
18th " L. D. Young.
19th " A. H. Raleigh
20th " John Sharp.
Sugar House Ward, W. C. A. Smoot.
Brighton, A. H. Raleigh.
Big Cottonwood, David Brinton.
Mill Creek, Reuben Miller.
South Cottonwood, J. S. Rawlins.
West Jordan, Archibald Gardner.
South Willow Creek, I. M. Stewart.

TOOELE COUNTY.

JOHN ROWBERRY, Presiding Bishop.

E. T. City, G. W. Bryan.
Pine Kanyon, Moses Martin.
*Tooele City, John Rowberry.
Grantsville, T. H. Clark.
St. Johns, G. W. Burridge.
Centreville, James Jordan.
Vernon, Hyrum Bennion.
Deep Creek, Edwin Tadlock.
Skull Valley, B. F. Knowlton.

UTAH COUNTY.

A. O. SMOOT, Presiding Bishop, Provo.

First Ward, J. P. R. Johnson.
Second Ward, A. H. Scott.
Third Ward, Hyram Tanner.
Fourth Ward, Wm. Follett.
Lehi, David Evans.
Cedar Fort, H. F. Cook.
Fairfield, John Carson.

DAVID EVANS, Presiding Bishop over the three last named places.

American Fork, L. E. Harrington.
Alpine, T. J. McCullough.

L. E. HARRINGTON, Presiding Bishop over the two last named places.

Pleasant Grove, John Brown.
*Provo, A. O. Smoot.
Springville, Wm. Bringhurst.
Spanish Fork, A. K. Thurber.
Salem, alias Pondtown, Robt. H. Davis.
Payson, J. S. Tanner.
Santaquin, D. H. Halladay.
Spring Lake Villa, B. F. Johnson.

J. S. TANNER is presiding Bishop over the four last named places.

Goshen, Wm. Price.

JUAB COUNTY.

JOEL GROVER, Presiding Bishop

Mona, Edward Kay.
*Nephi, alias Salt Creek, Joel Grover.
Levan, Elmer Taylor.

SANPETE COUNTY.

Fountain Green, R. L. Johnson.
Moroni, G. W. Bradley.
Fairview, Amasa Tucker.
Mount Pleasant, W. S. Seeley.
Spring City, Frederick Olsen.
Ephraim, Kanute Petersen.
Manti, A. J. Moffitt.
Gunnison, J. S. Horne.
Fayette, John Bartholomew.

SEVIER COUNTY.

J. A. YOUNG, Presiding.

Salina, Peter Rasmussen.
Glenwood, Heleman Pratt.
*Richfield, Nelson Higgins acting.
Monroe, Moses Gifford.
Annabelle Springs, Edward Roberts.
Joseph, Iver Isaacson.

MILLARD COUNTY.

THOMAS CALLISTER, Presiding Bishop.

Scipio, Daniel Thompson.
Cedar Springs, alias Holden, David Stephens.
*Fillmore, Thomas Callister.
Meadow Creek, W. H. Stott.
Oak Creek, P. D. Lyman.
Kanosh, Culbert King.

BEAVER COUNTY.

JOHN R. MURDOCK, Presiding Bishop.

*Beaver, John R. Murdock.
Minersville, James McKnight.

IRON COUNTY.

Paragoonah, S. S. Smith.
*Parowan, W. H. Dame.
Summit.

W. H. DAME, Presiding Bishop over the three last named places.

Panguitch, G. W. Sevy.
Cedar City, Henry Lunt.

KANE COUNTY.

Kanarra, L. W. Roundy.
Harmony, W. D. Pace.
Bellevue, J. H. Johnson.
*Toker, J. T. Willis.
Virgen, John Parker.
Rockville, C. N. Smith.
Long Valley, James Leathead.
Kanab, Levi Stewart.

WASHINGTON COUNTY.

Harrisburg, O. B. Adams.
Washington, J. W. Freeman.
*St. George, D. D. McArthur.
Santa Clara, Edward Bunker.
Pine Valley, Wm. Snow.
Pinto, Richard Robinson.
Hebron, G. H. Crosby.

LINCOLN COUNTY, NEVADA.

Clover, Wm. Fulsipher.
Panacca, T. J. Jones.

*County Seats.