Utah Territory.

We come now to the history and last chapter of the persecutions against the Mormons, commenced under the administration of Grant, and like the history of Louisiana, South Carolina and other Southern States, "it is a history of repeated wrongs." It began with the appointment of Wils. Shaffer, late of Freeport, Illinois, as Governor of Utah, in the year 1869-70; and that of George A. Black, Secretary, a mere boy, from the same place, who had prepared himself to act as Governor of this Territory, by a long and faithful service as a member of a minstrel troupe. Shaffer's qualifications were that he had served under Ben. Butler during the war. Went out with empty hands and purse, but on his return built, at Freeport, the largest and most expensive house in all that part of Illinois; and while a jolly good fellow, could drink deeper and oftener than any other man in the grand army—not even excepting the commanding General himself. Shaffer came here, and at once signalized his official career by having the Hon. Chas. L. Wilson, Chief Justice, removed because he would not violate law and decide questions in court in accordance with his Executive demands; and Grant, regarding the judges in a Territory as mere members of the Governor's staff, in order to make it a military unit, removed the only honest and capable Judge then on the bench. During the Governor's illness, or absence, the 4th of July came around, and the Mormons and conservative Gentiles proposed an old-fashioned celebration of the day, when the Mormon Legion would constitute the military escort; whereupon Secretary Black, as acting governor, issued a proclamation, forbidding any such demonstration, and actually applied to Col. De Trobriand, in command of the Thirteenth Infantry, then stationed here, to fire upon the Mormons should they dare to commit the high crime of celebrating the 4th of July. The celebration was broken up, but a few members of the battalion came out as an escort for some little girls, and were seized and arrested for high treason, locked up in Camp Douglas for a long period on the order and warrant of a judicial Dogberry, himself a bigamist, from Chicago. Congressman Dawes spent that 4th of July at Ogden, and was fully informed of all these outrages, but no action has ever been taken upon them. Grant's Governor and Secretary committed them, and since that period no disinterested Judge has ever sat on the Bench here, and no legal grand or petit jury has ever been drawn in this judicial district. Whenever that time comes, Messrs. Secretary Black and his coadjutors, who committed these outrages, false imprisonments and malicious prosecutions, will have an opportunity in court to answer therefor. In the meantime, a new spirit appeared upon the field, and, having first taken possession of the President's and his lady's confidence, came here to *convert* or *convict* this 125,000 people. That man was a religious and political Jesuit, by the name of Newman, who had the *entree* of the White House at all hours; made music for its inmates with his chimes over the Methodist Church, which he desecrated; who literally "stole the livery of Heaven to serve the devil in," and who, having first organized the *conservative* Republican party in New Orleans, established a conservative paper called the *Times* there; received $800 from the conservative Legislature to publish its records, and then sold out, became the most radical of all the New Orleans carpet baggers, and rushed to Washington to help Kellogg and Durell trample upon the rights of the people; and who, finally made an incursion into this valley. His avowed purpose was to preach down polygamy; and President Young, as is his habit, invited him to preach in the Tabernacle, which seats comfortably 13,500 people, and when crowded will contain 15,000, and where Orson Pratt, the most learned and able of the Mormon priests, would reply to him. A debate or discussion was arranged, and Father Brigham sounded his ram's horn, and from mountain and valley, from canyon and gorge, from city and country, young and old, all men and women, of all castes, colors and conditions, were summoned to the conflict. The Tabernacle was crowded, the great organ pealed out its notes, the choir, composed of 200 female voices, led by a soprano of surpassing richness and volume of voice, and 160 male voices, sang the loud anthem, when Brother Newman began; and with all his own sermons, and those he had purloined from others, he preached and exhorted, he argued and ranted, he prayed and he raved to his heart's content, until his mind and words were exhausted. Now came Orson Pratt, armed, like David in his fight with Goliah, with a single *stone*; but that was the *Bible*—the Gentile Bible; the Mormon Bible; for they are but one and the same, the book inspired by God; the word of God; *this and nothing more.* Holding up this inspired book he demanded of his opponent that he should now admit, or deny in the presence of that excited audience, that this boook, both Old and New Testaments, was the word of God! After much evasion, hesitation, equivocation, like Count Fosco before the District Committee of Congress, the Jesuit Newman was compelled to admit that the big book was the word of God, and all that therein is was inspired of Him. Fatal concession! Hopeless surrender of the key of the entire position. Orson Pratt, rising in all his majesty, first holding the book on high, then lays it on the pulpit, and reads page after page, chapter after chapter, line upon line, giving the history of the prophets and chosen sons of God, whose wives and concubines, compare to these Mormons, were like the sands upon the sea shore contrasted with the sails which float upon its bosom. The dullest in all that crowd, the most ignorant and unlearned Mormon, could understand the argument and logic, and the triumph was complete. If God approved of and sanctioned polygamy; if his chosen servants, his prophets and his anointed kings could with his smiles and approbation, indulge in plurality of wives; if Christ never, in any manner, discountenanced what had always existed under the former dispensation, why should not President Young, the Prophet of the Lord, as they believe, do likewise? Why should he be abused, vilified, persecuted, imprisoned, for living a life in strict coincidence with David and Isaiah and Solomon, and all the heroes of the Old Testament? Newman was beaten, conquered, overcome, not by Orson Pratt, not by Brigham Young, but *by the Bible, the inspired book of God*, and, like Catiline, he fled, he absconded, he escaped, he rushed back to the White House to ask new powers, to secure new weapons, to find new arguments with which to conquer this stiff-necked people who understood the Bible better than he did, and who justified polygamy by the very words of God himself. The President, mourning over the disaster and defeat of his chaplain, his confessor, his spiritual pastor and master, was only too willing to arm him with new weapons, to clothe him with new powers, and to start him once more on his crusade against this people. What next occurred, we shall see.—*Industrial Age.*

Mines Around Salt Lake City.

Seated around the bar-room stove—for it is always cold at night in Alta—I asked of several miners how many mines they supposed there might be within fifty miles of Salt Lake City. * *

These miners and others whom I met in other districts agreed on the average with this broad statement. There are around Salt Lake more than 30,000 locations, including working mines and prospects, of which over a thousand are in operation, employing more than twenty first-class and several small furnaces, and ten thousand men in operating the whole.

The value of production is over $6,000,000 annually. To whose benefit does this enormous wealth accrue? Not to the working miners, who are always "prospecting" and always poor, but to rich capitalists and thriving speculators. Doubtless the mountains are full of silver and lead, and if capital could be obtained to work all these thirty thousand prospects and a hundred thousand more which might be found, silver would so glut the world's markets, that its purchasing value would be materially reduced. But only a few of the largest mines are worked to their full capacity, while most of even those are used simply for stock-jobbing purposes.

The proceedings cited in regard to the Emma apply to many of the rest. A mine is bought for a few thousand dollars, and by trickery or false representation is "put on the market" for hundreds of thousands or millions, which, if operated on the basis of its true value, would yield paying dividends. With the present fraudulent system it pays nothing to the deluded purchasers. But the mines will all contribute largely to the prosperity of Utah and especially to that of Salt Lake City, by bringing in population and capital, and enhancing the value of real estate. The safest speculation is not in mines, but in houses and lands.

On the next day, under the pilotage of Mr. Sweeney, I climbed the hills, looked into a hundred small holes or "prospects," talked with the miners, who in their poverty were living on rich hopes for the future, and then, my previous experience in gold mines at Cariboo serving as a warning to be careful, prepared to leave Little Cottonwood without yielding to the temptation of silver.—*The Mormon Country, by John Codman.*

COURT PRACTICE IN THE TERRITORIES.

SUPREME COURT OF THE UNITED STATES.

No. 139—*October Term*, 1873.

James Hornbuckle and Samuel Marshall, Plaintiffs in Error, *vs.* John Toombs. | In error to the Supreme Court of the Territory of Montana.

Mr. Justice Bradley delivered the opinion of the Court.

This was an action brought by Toombs, the defendant in error, against the plaintiffs in error in a district court of the Territory of Montana, for damages caused by the diversion of a stream of water, by which the plaintiff's farm was deprived of irrigation, and for an adjudication of his right to the stream, and an injunction against further diversion. The action was framed and conducted in accordance with the practice as established by the legislative assembly of the Territory, of which the following are the material provisions:

"SEC. 1. There shall be in this Territory but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs.

"SEC. 2. In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

"SEC. 38. The only pleadings on the part of the plaintiff shall be the complaint, demurrer, or replication to the defendant's answer; and the only pleadings on the part of the defendant shall be a demurrer to the complaint, or a demurrer to the replication, or an answer to the complaint." * * *

"SEC. 155. An issue of fact shall be tried by a jury, unless a jury trial is waived, or a reference be ordered, as provided in this act."

The case was tried by a jury, who found for the plaintiff, assessed his damages at one dollar, and decided that he was entitled to seventy inches of the water. Upon this verdict the court gave judgment and awarded an injunction as prayed.

The only errors assigned are based on the intermingling of legal and equitable remedies in one form of action.

Such an objection would be available in the circuit and district courts of the United States. The process act of 1792 (1 Stat., 275) expressly declared that in suits in equity, and those of admiralty and maritime jurisdiction, in those courts, the forms and modes of proceeding should be according to the principles, rules and usages which belong to courts of equity and to courts of admiralty respectively, as contradistinguished from courts of common law, subject to such alterations and additions as the said courts should respectively deem expedient, or to such regulations as the Supreme Court should think proper to prescribe. The Supreme Court, in prescribing rules of proceeding for those courts, has always followed the general principle indicated by the law. Whether the Territorial courts are subject to the same regulation is the question which is now fairly presented.

In the case of Orchard *vs.* Hughes (1 Wall., 77) a majority of this court was of opinion that the Territorial courts were subject to the same general regulations in equity cases which govern the practice in the circuit and district courts. That was the case of a foreclosure of a mortgage in the Territorial court of Nebraska, and the court, under a Territorial law, not only decreed a foreclosure and sale of the mortgaged premises, but gave a personal decree against the defendant for the deficiency. We had decided in Noonan *vs.* Lee, 2 Black, 499, that under the equity rules prescribed for the circuit and district courts, such a decree could not be made. The majority of the court now applied the same rule in the case of Orchard *vs.* Hughes, although it was decided by a Territorial court. Following out the principle involved in that decision, we subsequently, in the case of Dunphy *vs.* Kleinsmith (11 Wall., 610,) reversed a judgment of the Supreme Court of Montana, on the ground that the case (being in nature of a creditor's bill, filed to reach property which the debtor had fraudulently conveyed) was a clear case of equity, whilst the proceedings therein exhibited no resemblance to equity proceedings, there being a trial by jury, a verdict for damages and a judgment on the verdict.

On a careful review of the whole subject we are not satisfied that those decisions are founded on a correct view of the law. By the 6th section of the organic act of the Territory of Montana (13 Stat., 85), with which that of Nebraska substantially agreed, it was enacted, "that the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act." By the 9th section it was provided "that the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace," and that "the jurisdiction of the several courts herein provided for, both appellate and original, and that of the Probate Courts and Justices of the Peace, shall be limited by law; *Provided*," that "the said Supreme and District Courts respectively shall possess chancery as well as common-law jurisdiction."

Now, here is nothing which declares, as the process act of 1792 did declare, that the jurisdiction of common law and chancery shall be exercised separately, and by distinct forms and modes of proceeding. The only provision is, that the courts named shall possess both jurisdictions. If the two jurisdictions had never been exercised in any other way than by distinct modes of proceeding, there would be ground for supposing that Congress intended them to be exercised in that way. But it is well known that in many States of the Union the two jurisdictions are commingled in one form of action. And there is nothing in the nature of things to prevent such a mode of proceeding. Even in the Circuit and District Courts of the United States the same court is invested with the two jurisdictions, having a law side and an equity side; and the enforced separation of the two remedies, legal and equitable, in reference to the same subject-matter of controversy, sometimes leads to interesting exhibitions of the power of mere form to retard the administration of justice. In most cases it is difficult to see any good reason why an equitable right should not be enforced, or an equitable remedy administered in the same proceeding by which the legal rights of the parties are adjudicated. Be this, however, as it may, a consolidation of the two jurisdictions exists in many of the States, and must be considered as having been well known to Congress; and when the latter body, in the Organic Act, simply declares that certain territorial courts shall possess both jurisdictions, without prescribing how they shall be exercised, the passage by the Territorial Assembly of a code of practice which unites them in one form of action, cannot be deemed repugnant to such Organic Act.

A clause in the 13th section of the act, however, has been referred to, by which it is declared "that the Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said Territory of Montana as elsewhere in the United States," and it is argued that by virtue of this enactment, all regulations respecting judicial proceedings which are contained in any of the acts of Congress, are imported into the practice of the Territorial courts. But this proposition is not tenable. Laws regulating the proceedings of the United States courts are of specific application, and are in truth and fact, locally inapplicable to the courts of a Territory. There is a law authorizing this court to appoint a reporter. In one sense this law is not locally inapplicable to the Supreme Court of the Territory; but in a just sense it is so. The law has a specific application to this court, and cannot be applied to the Territorial Court without an evident misconstruction of the true meaning and intent of Congress in the clause of the 13th section above referred to. That clause has the effect undoubtedly, of importing into the Territory the laws passed by Congress to prevent and punish offences against the revenue, the mail service, and other laws of a general character and universal application; but not those of specific application.

The acts of Congress respecting proceedings in the United States Courts are concurred with, and confined to, those courts, considered as parts of the Federal system, and as invested with the judicial power of the United States expressly conferred by the Constitution, and to be exercised in co-relation with the presence and jurisdiction of the several State courts and governments. They were not intended as exertions of that plenary municipal authority which Congress has over the District of Columbia and the Territories of the United States. They do not contain a word to indicate any such intent. The fact that they require the Circuit and District Courts to follow the practice of the respective State courts in cases at law, and that they supply no other rule in such cases, shows that they cannot apply to the Territorial courts. As before said, these acts have specific application to the courts of the United States, which are courts of a peculiar character and jurisdiction.

Whenever Congress has proceeded to organize a government for any of the Territories, it has merely instituted a general system of courts therefor, and has committed to the territorial assembly full power, subject to a few specific or implied conditions, of supplying all details of legislation necessary to put the system into operation, even to the defining of the jurisdiction of the several courts. As a general thing, subject to the general scheme of local government chalked out by the Organic Act, and such special provisions as are contained therein, the local legislature has been entrusted with the enactment of the entire system of municipal law, subject also, however, to the right of Congress to revise, alter, and revoke at its discretion. The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature; and the jurisdiction of the Territorial courts is collectively co-extensive with and correspondent to that of the State courts—a very different jurisdiction from that exercised by the circuit and district courts of the United States. In fine, the Territorial, like the State courts, are invested with plenary municipal jurisdiction.

It is true that the district courts of the Territory are, by the Organic act, invested with the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and a portion of each term is directed to be appropriated to the trial of causes arising under the said Constitution and laws. Whether, when acting in this capacity, the said courts are to be governed by any of the regulations affecting the circuit and district courts of the United States, is not now the question. A large class of cases within the jurisdiction of the latter courts would not, under this clause, come in the Territorial courts, namely, those in which the jurisdiction depends on the citizenship of the parties. Cases arising under the Constitution and laws of the United States would be composed mostly of revenue, admiralty, patent, and bankruptcy cases, prosecutions for crimes against the United States, and prosecutions and suits for infractions of the laws relating to civil rights under the XIVth and XVth amendments. To avoid question and controversy as to the modes of proceeding in such cases, where not already set-