

THE WRIT OF MANDAMUS.

BEAVER, July 25, 1876.

Editor Deseret News:

The position of the Supreme Court of the Territory of Utah upon the question of a petition for mandamus, recently applied for by Marcus L. Shepherd, of the Second District, is so singular, and so nearly unprecedented, that some attention should be paid to it.

Mr. Shepherd, of Beaver City, brought an action in ejectment against one McGerry, the latter having "jumped" a certain piece of land used by the plaintiff as a sheep pasture. Judge Sutherland, of Salt Lake City, was Shepherd's counsel, but his assistant, Spencer Martin, Esq., of Beaver, attended to the preliminary stages of the action; and when the summons was issued by the Clerk of the Second District Court, Martin placed it in the hands of the Sheriff of Beaver County for service, who discharged the duty promptly and in entire accordance with the law.

Now, if there were no other motive for this, as I think, extra-judicial proceeding than a desire to keep strictly and entirely within the pale of the law, there would be no occasion for complaint; but Judge Boreman's well-known antipathy to everything "Mormon," as amply illustrated in every case brought before him in which "Mormon" and "Gentile" were the opposing parties, even if no other reason existed, gives good ground for a contrary belief; Judge Schaffer had not been long in the Territory, Judge Emerson was absent, and the Second District Judge's representations prevailed.

The ground upon which this preposterous ruling of the Supreme Court is pretended to be based, is that that body has no original jurisdiction in matters of mandamus, &c.; the judges citing the Territorial statutes in support of that position; thus, by an abortive construction of the text, entirely obliterating the spirit of the law. The "original jurisdiction" of any Supreme Court is necessarily limited, the functions of such bodies being rather to correct errors than to institute proceedings; and in the particular case referred to, it had the power to rectify the blunder of the Court beneath and enjoin upon it a specific performance of duty, the inferior tribunal itself having refused to obey a law, and the Supreme Court above having the power of enforcing a compliance therewith; but apparently in the desire to assist the set programme of a handful of communists, this point was lost sight of, and the barren fact that our highest judicial body cannot commence certain proceedings was made the aperture through which the Second District Court at once escaped a disagreeable

predicament and established a precedent at variance with law, justice and reason, the judge of that Court having half the vote in the decision.

The writ of mandamus is an indispensable function of all courts of records; through it, errors and abuses, whether of intent or ignorance, are corrected; and there certainly never was a case wherein its exercise was more loudly called for than in the case of Shepherd vs. the Second District Court. The great question involved was not so much whether an interloper can with impunity settle upon the lands of an old resident, for that can and will be tried independently of the legality of certain proceedings, but whether the executive officers of the various counties of Utah, like the judicial officers, are to be denuded of power to such an extent as renders them almost nonentities. We know that the Poland bill intended to and did accomplish the emasculation of the Probate Courts, but a sheriff, obeying only the orders and serving the processes of the various tribunals within his county, exercised but little discretionary power, and was not, therefore, a dangerous officer. Congressman Poland, consequently, could have no reasonable object in cutting off that official's duties and powers, and he did not do so; for the bill provides that a sheriff may serve processes out of a district court for a county in which both are situated, in accordance with the Territorial law upon that subject, and the Territorial law requires such service to be made by the sheriff or territorial marshal. This would seem to indicate that the judge of a district court may order the service to be performed by either a United States marshal (created for the purpose by the Poland bill) or by the sheriff; and in the absence of such order (as in the case of Shepherd vs. McGerry), the moving party in the suit can certainly avail himself of that privilege, which in this instance he very properly did, and Judge Boreman very improperly decided such service to be nugatory and void.

The defendant's attorneys alleged that the proper remedy was a certiorari, but it is exceedingly questionable if this writ can be invoked when there have been no proceedings in the court below. Clearly the Second District Court refused to perform a duty specifically enjoined upon it by congressional and legislative enactments; the Supreme Court did its duty in issuing a mandamus to compel such performance; and that this latter body has since seen fit to retrace its steps is not very gratifying to that class of our citizens who prefer to see politics and personal prejudices excluded from the bench.

BEAVER.

Territorial Governments.

A bill has been introduced into Congress providing for the election of the various officers of the territorial governments by the people of the territories. The bill is certainly a wise one, and it is to be hoped that it will become a law. There is no good reason why this policy should not have been adopted with reference to the territories from the beginning. The hardy pioneers of the west are just as competent to select officers to execute their laws, as they are to determine what those laws shall be. It is not in accordance with the spirit of our institutions that the people of any sections of the country shall be denied the right to select for themselves those who are to administer their local governments. Our territories are filled with men of intelligence and enterprise, men who have gone west to seek their fortunes, bearing with them a courage that sustains them amidst all the trials and privations of a border life, and a type of manly ability that does not suffer by comparison with pretensions of older commonwealths. The halls of Congress are to-day graced by the presence of Territorial delegates who, in point of ability, are the peers of our most distinguished legislators, and it is but justice to them and to the people whom they represent that they be permitted to enjoy to the fullest extent the privilege of controlling their own domestic affairs, subject only to such supervisory control as the general government, through Congress, may rightfully exercise.

The relegation of the election of these officers to the people of the Territories possesses another excel-

lent feature in that it entirely abolishes that system of Territorial patronage which has for years been an intolerable nuisance. The control of Territorial appointments is not at all essential to the successful administration of public affairs. These appointments do not belong to that class of patronage, the control of which is necessary to enable the dominant political party to impress its peculiar policy upon the administration of the general government, and cannot with justice be claimed as an incident to that investiture with power which carries with it a responsibility to the people and a correlative right to control the appointments and shape the policies of the different departments of the government. The proposed legislation, while but an act of simple justice to the people of the territories, will lop off an immense amount of unnecessary federal patronage, and just so far as it extends in this direction, its tendency will be to purify our national politics, and to prove a blessing to the whole country.—St. Joe Herald.

"SUN-CHOLERA MIXTURE."

About forty years ago, when the cholera was impending over New York, the Sun published a formula for the prevention and relief of attacks of the disease, which proved then of wonderful efficacy when taken promptly. Experience has also proved it to be almost a sure specific for cholera morbus, and all summer diseases of the bowels when taken at the appearance of the first premonitory symptoms. The recipe was prepared by the then most eminent physicians of London and New York, and the Sun did a good act in giving it to the world, as the remedy proved both efficacious and simple, and as such was a boon of health and life to the poorer classes of New York. Almost every year since, the Journal of Commerce has republished it with commendations of it. We have several times within ten years reprinted it from that excellent paper, and as the season is at hand for summer diseases, we again present it for the benefit of the public. The prescription is:

- Tinct. Opii. Capsici. Rhei co. Menth pip. Campho.

Mix equal parts of each.

DOSE—For a child from 3 to 10 drops according to age; for an adult from 10 to 30 drops, according to the seriousness of the attack. In severe cases take twenty drops every hour until relief is obtained. An old gentleman who has used this remedy in his family and through very sickly seasons, ever since it was first published, says he does not believe any one will ever have the cholera, dysentery or similar complaints, who uses this remedy promptly on the first appearance of bowel troubles, before the disease gets a firm hold.

In English, the prescription is equal parts of the tinctures of opium, red pepper, rhubarb, pepper and camphor. It can be put up by any druggist and is not expensive. It should be kept in every family and will prevent, if judiciously used, a great deal of suffering, sickness and death.—Bridgeport (Ct.) Standard.

DIED.

In the 14th Ward, Salt Lake City, Aug. 1st, at 10 o'clock p.m., of scarlet fever, LULU MARY, daughter of R. M. and Mary Wilkinson, aged 13 months and 14 days.

At Lambeth, London, July 3, 1876, after a short illness, Elder FREDERICK WINDER, aged 85 years. Elder Winder was for many years President of the Lambeth Branch, and very faithful in that position. The Lambeth Saints will miss a true friend in Brother Winder.—Mil. Star.

At Helton-le-Hole, Durham, June 11th, 1876, ALFRED, son of Joseph and Eliza Mathews, aged 5 years, 4 months, and 11 days.—Mil. Star.

At Goshen, July 22nd, 1876, ALICE ANN GWYTHER, daughter of George and Louisa Taylor; aged 10 years, 8 months and 4 days.

Deceased died of measles, followed by fever, and was sick seven weeks; was a faithful attendant at Sunday School, and was beloved by all who knew her. She set an example worth following.—Com.

Millennial Star, please copy.

At Springville, Utah, July 24th, 1876, HANNAH HUNTINGTON, wife of Samuel Carter, aged 68 years.

Deceased was born June 22nd, 1808, at Liverpool, England; embraced the gospel in April, 1855; left her native country to gather with the Saints in 1860, arriving here in 1862; was highly respected by all who knew her; her life and conduct were most exemplary, and her faith in the gospel of

the latter days unwavering. She was for a number of years secretary of the Relief Society of Springville, and spent much time, gratis, in instructing the children of the poor, and others, in the art of fancy knitting.

On Wednesday, 20th of July, her remains were taken to the meeting house, where a large assembly had convened to pay their last respects to our beloved sister. Consolatory addresses were offered by Elders C. D. Evans, Thomas Child, W. H. Kelsey and B. Bringhurst.—Com.

Millennial Star, please copy.

Administrators' Notice.

ALL PERSONS INDEBTED TO THE estate of Jesse Louder deceased, will please come forward and settle. All persons holding claims against said estate will also present their claims for settlement, as the administrators desire to adjust the affairs of said estate.

JOHN PARKER, Administrators. ANN LOUDER, Administrators. w1

Virginia City, Jan. 17th, 1876.

TO JOHN HUTCHINS.

YOU WILL PLEASE TAKE NOTICE that we have expended in labor for you Eighty Dollars (\$80.00) on the Midway mine in Ophir Mining District. That unless the same is paid within ninety days from the date hereof, together with our costs, your interests in said mine will be forfeited to us by law.

H. D. CONVERSE. CALVIN KIRK. L. I. GREENEWALD.

Ophir Mining District, Sept. 29th, 1875. w00

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w1 JAMES DUNN, Supt.

SPRING CONFERENCE, 1876.

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