NOTICE.—Owing to the non-arrival of a lot of paper, which we had ordered, we were under the necessity of omitting the usual insert from No. 42 of the Weekly, we, however, enclose *it* in the present issue (No. 43.)

THAT RULING.

IN another column we give the Ruling of Judge Hawley in the case of Col. Ottinger and others arrested for rebellion. We give it publicity because we wish the world to know the kind of men we have in this country acting as Federal Judges. We know that by publishing this decision and other articles concerning such men as Judge Hawley we give them an importance which they do not merit. Whenever we allude to them we feel that we ought to apologize to our readers for so doing. Individually they are far beneath our contempt; but by some means they have obtained office, and thus have importance conferred upon them; and in this instance it is the Judge we criticise and not the man.

There are many points in this ruling which are new and which will strike those who peruse them, especially lawyers, as exceedingly ridiculous. It will be news to our citizens to learn that since they took up their residence here they have not been a part of the Union! We, in this country, have always been simple enough to believe that we were a part of the Union. We guess Judge Hawley entertained the same opinion at the time he delivered his two hours' oration, July 4th, 1869; if he did not, then he selected a most extraordinary subject on which to talk to the people.

There is one thing a parent in all that Judge Hawley says and in all that was said by the prosecuting attorneys, and that is, there has been no law of Congress, or statute of the Territory violated by the training of Messrs. Ottinger, Burt and the others. The most that can be said about their action is that it is a violation of the late Governor's proclamation. Judge Hawley evades the issue when he quotes the Organic Act to establish the idea that the Governor is Commander-in-Chief of the Militia of this Territory. Who disputes this? Do the men who went out to train? Do the gentlemen arrested? Who has ever disputed it? If any member or officer of the militia of this Territory has done so, we are not aware of it. To assume, therefore, that this is called in question is to endeavor to throw dust in the eyes of the people, and to dodge the point at issue. The real question is, has a Governor's proclamation the force of law, or can a violation of such be called rebellion or insurrection? Judge Hawley says that disobedience to a Governor's prolcamation, issued rightfully, is unquestionably rebellion. But he says "*issued rightfully*." There is great meaning in these words. Would disobedience to a proclamation of a Governor of Utah Territory, reviving the police regulation of William the Conqueror, respecting the ringing of the curfew bell for the extinguishing of fires and lights, be called rebellion? Would it be rebellion to disobey a proclamation of a Governor of this Territory requiring the people to pay homage to a cap placed upon a pole as was Gesler's among the Swiss."

The Constitution expressly says that

"A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

Judge Hawley says this cannot be construed to permit insubordination to the rightfully constituted authorities. Granted. But, we ask, can it be construed to permit the Governor to override law, to act in defiance of statute, to set aside the organized militia and to establish a despotism? A militia organization has existed in this Territory for upwards of twenty-one years. It was organized years before the Territory was organized, and while we lived under the Provisional Government of the State of Deseret. The exigencies of our position, surrounded by wild Indian tribes, demanded such an organization. Statutes have been passed by the Legislative assembly of the Territory to authorize and regulate it, and under these the militia has operated until the present. A Governor arrives here from a remote place, and issues a proclamation in which he assumes extraordinary and unheard of powers. He sets out by prohibiting all drills, musters or gatherings of militia of the Territory—a step to begin with in direct antagonism to the Federal Constitution and to the rights of the people under that sacred instrument. But he did not stop there. He proceeded to demand all the arms and munitions of war belonging either to the U. S. or to the Territory of Utah, to be immediately delivered to a man whom he called "an assistant Adjutant General;" he concluded by appointing another person whom he called a "Major General" to call out the Militia. Under what law, or by what authority, could he appoint either an Assistant Adjutant General or a Major General of the Militia of Utah? Did he do this by virtue of his authority as Commander-in-Chief? Whatever the assumption was the step was illegal. The Commander-in-Chief of the Militia of Utah Territory has no right to prohibit the peaceful musters and drills of that Militia. To attempt to do this is an illegal stretch of power, and is clearly vexatious and hostile to the rights and liberties of the people. Neither has the Commander-in-Chief the right to appoint a Major General of the Militia of the Territory. To prove this reference need only be made to the laws of Congress; one of which says, respecting General officers of the Militia in the several Territories, that they shall be elected *by the people*, in such manner as the respective Legislatures thereof shall provide by law; Act of June 15, 1844, Section 2 of Chapter 69. In the face of such a law, how can it be said that such a proclamation, as that alluded to, has been "issued rightfully" when it is in plain violation of the Constitution and the laws of Congress?

So much for the Proclamation.

Now, if the offence of which these arrested men are accused is anything, it is simply disobedience to an order embodied in the proclamation of the Governor, and if sustained would expose them to a reprimand from a Court Martial of the officers of the Territorial Militia. But for this "*heinous*" offence Judge Hawley, setting aside all law, both of the Territory and of the United States, and without precedent, presumes to issue a writ and arrest men, and in his capacity as a Court of examination, immure free American citizens for months to come in a military prison! Well may he say that we are not a part of the Union.

RULING OF JUDGE HAWLEY.

REPORTED BY GEO. F. GIBBS.

In the case of the people *versus* Ottinger and others, that was examined yesterday, I regret to say I have not had time to give it that careful and thorough examination, particularly as touching the law of the case, as I could have desired; owing to my indisposition I was unable to take up the question and examine it in any degree, until this morning.

All governments are based upon authority. The bulwark of that authority is that of mental and physical force. In a Republic like ours this authority is granted by the consent of the people of the States in the Union. A Territory is not a part of the Union, or a part of the Government of the United States. Its territorial elements are part, however, of the domains of the United States, and its people subject to the government of the United States. It has no part, or the people have no part, in the election of the President, or other general officers of the government. It has no Senator or Member of the House of Representatives; but is permitted to have a Delegate to Congress to represent the interests of the people and Territory. This Delegate is not permitted to vote, nor to take part in the general discussions and deliberations on business, other than that pertaining to the Territories.

The Constitution of the United States, Article 2, Sections 1 and 2. Section 1 provides: "The executive power shall be vested in a President of the United States of America." Section 2 of the same article provides: "The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into actual service of the United States." Article 4, Section 3 provides that: "Congress shall have power to dispose of, and make all needful rules and regulations respecting the Territory, or other property belonging to the United States." Article 2, of the 1st Amendments provides: "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

This right to this Amendment of the Constitution does not mean, nor can it be construed to permit, insubordination to the rightful constituted authorities over the people of the States: nor insubordination of the military organization in the States: nor insubordination of that, or any of the subordinate commanders of such military organizations. For instance, it is the right of the President to declare a State, or other particular place, under certain circumstances, in rebellion, and to place such State or place under martial law: so also it is the right of the Governor to do the same thing under certain circumstances. If such was done by the President or by the Governor, by due proclamation, no one would insist, I apprehend, upon the right of any one to disobey the President's order or that of the Governor, or to disobey the proclamation to that effect; if he had so disobeyed such proclamation, he would unquestionably be in rebellion to the authority of the government that had issued that proclamation—that had issued it rightfully—rightfully.

The Governor of Illinois, who is, under the constitution of that State, Commander-in-Chief of the militia, subject to the President under the Constitution of the United States, in 1863—if my memory serves me correctly—issued his order to a certain regiment of that State directing them where to rendezvous. This regiment, under the lead of its officers, said that they were dissatisfied with that order of the Governor—that they wished to join a certain brigade of the city of St. Louis. The Governor was not willing that they should join that brigade, and held them subject to his military order. They secured to themselves a boat, went on board and pursued their way down the Mississippi river, intending to go to the City of St. Louis to join the brigade of their choice. The Governor issued his order that they be put under arrest. This military organization, or regiment, then embarked; as they neared the city of Quincy, they met there one, or more, of the staff of the Governor, who, under the direction of the Governor, had planted his cannon upon its bank. That regiment was put under arrest by his military order, and no one, either in the State or in the General Government, has from that day, to my knowledge, questioned his authority to do so.

By the Organic Act of this Territory, Sec. 2, the Governor is charged with the duty of being Commander-in-Chief of the militia of this Territory; and also is charged with the duty to see that the laws, not only of this Territory, but the laws of Congress that are applicable, shall be faithfully executed. By Sec. 17 of the Organic Act, the Constitution of the United States and the laws of the United States are extended here, and declared to be in force in this Territory, so far as they may be applicable. It is claimed by the counsel for the defendants, that there is a law of the Territory organizing a militia. It was disputed on the part of one of the counsel for the defendants, and on the part of the other counsel it was insisted upon as being an illegal law or enactment. The counsel for the defendants also insist that to this military or militia law of the Territory there is a military organization.

It is not needful with this proceeding that I should decide whether this militia law of the Territory is not all or in any particular legal. I shall for the present assume its legality. I will remark, however, that the attempted revision of this law, pages 190-2-3 of the Territorial statutes, probably is not a statute. There is no evidence that it was ever enacted by the Legislature, or approved of by the Governor. If not, it is not a law, nor is it of force. But there is an organization under the previous law of 1852, which may be found on pages 207 to 223 inclusive. This organization is denominated by this law, the "Nauvoo Legion;" of this organization the Governor of this Territory, by virtue of the authority of the United States in the Organic Act contained, is the Commander-in-Chief. As such his orders and proclamations, when rightfully put forth, have the force of law and must be obeyed.

On the 15th of September, 1870, the Governor of this Territory issued the following Proclamation, which was admitted by the defendants' counsel to have been issued, and there is no dispute to its being in due form of law.

(The Proclamation was here read.)

This Proclamation is admitted by the defendants to have been made. There is no doubt, from what has preceded, or the remarks which I have made, of the Governor's right to issue it. When issued it is binding upon all persons whatsoever, whether there is any military or anization or otherwise, and all are bound to take notice of such Proclamation. As to the wisdom or expediency of issuing it, I have nothing to say. It does not become me to comment upon it. I was not, nor never have been, the adviser of Governor Shaffer. I did not know that this Proclamation was even contemplated until it was in print.

The Governor must be acknowledged the principal representative of the Government of the United States, and also the representative of the Executive authority of the United States in this Territory. As such this Court is bound to respect him and his authority: as such the people are also so bound to respect and obey him in all that he may issue lawfully.

In 1862 Congress enacted a law to punish treason and rebellion, which may be found in the twelfth United States Statutes at Large, pages 589 and 590. This statute, or so much of it that is pertinent to the question before the court is as follows:—"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person who shall hereafter commit the crime of treason against the U. States, and shall be adjudged guilty thereof, shall suffer death, and all his slaves, if any he have, shall be declared and made free; or, at the discretion of the court, he shall be imprisoned for not less than five years and fined not less than ten thousand dollars, and all his slaves, if any he have, shall be declared and made free; said fine shall be levied and collected on any or all of the property, real or personal, excluding slaves, of which the said person so convicted was the owner at the time of committing the said crime, any sale or conveyance to the contrary notwithstanding."

Sec. 2: And be it further enacted, That if any person shall hereafter incite, set on foot, assist or engage in any rebellion or insurrection against the authority of the United States, or the laws thereof, or shall give aid or comfort thereto, or shall engage in, or give aid and comfort to any such existing rebellion or insurrection, and be convicted thereof, such person shall be punished by imprisonment for a period not exceeding ten years, or by a fine not exceeding ten thousand dollars, and by the liberation of all his slaves, if any he have; or by both of said punishments, at the discretion of the court."

Sec. 3: "And be it further enacted, That every person guilty of either of the offences described in this act shall be forever incapable and disqualified to hold any office under the United States."

This is a civil law, and this is a court of civil and criminal jurisdiction, charged by Congress with the duty of enforcing the laws of this Territory, and those of the United States. This law was passed July 17, 1862, it is therefore not so late as to become obsolete, as was intimated by counsel. Nor is the great rebellion that induced its enactment, so long past in the history of our country, as to cause either the President of the United States, the Governors of the States and Territories, courts and Judges or the people to forget the sad results of that treason and that rebellion.

Let us look at this statute for one moment: It will be observed from the 2nd section, that crime is varied in its application. "If any person shall hereafter incite, set on foot, assist or engage," either of these, "in any rebellion or insurrection against the authority of the United States, or the laws thereof."

The particular charge and proof seems to have been this—under this clause "That if any person shall hereafter engage in rebellion to the authority of the United States." Now it has been remarked here, and I was sorry for one that such remarks were made, that "Mormon" religion may have something to do with this matter. I wish it distinctly understood that the administrators of the laws of this Territory, or the United States, cannot know either "Mormon" or Roman Catholic, Episcopalian, Presbyterian, Methodist, Congregationalist or other denominations; all are entitled to the protection of the law and their religion, when it does not conflict with the authority of the Government, and shall be protected as far as I am concerned.

This proclamation of the Governor is still applicable to the military organizations, and people of this Territory, without distinction. It was said by one of the counsel on the part of the defendants, yesterday, that there were military organizations drilling, other than those of "Mormon" organizaations. If so, and that knowledge is brought to this court by proper affidavit, charging this crime upon any one of the officers, whether they are in this city, in Ogden, Corinne, or elsewhere, they shall be arrested if there is power enough in the government of