

GEORGE Q. CANNON,
EDITOR AND PUBLISHER.

Wednesday, February 26, 1873.

RETURNED TO HIS VOMIT.

Just before that Supreme Court decision last spring, which took the ring-fingers here so utterly aback, most of the press reports from Utah were of the extremely partisan character, and consequently were exceedingly untrustworthy, indicating a wonderfully reliable origin. It was surprising how men could sit and indite what they must have known were statements as stingy of the truth as they could possibly be. After the decision, the natural reaction followed, and the senders of said reports must have received a rebuke from their employers, for the character of the dispatches sent hence was modified to the mildness of milk comparatively, and a gentleman, understood to have intimate connection with said dispatches, came apologetically around with, "Please don't pitch into me. Don't you see I am reforming? Besides I didn't mean nothing!"

So far so good. But now that a new crusade has been commenced, the "dog has returned to his vomit and the sow that was washed is wallowing in the mire." The same old intensely partisan and therefore discolored and untrue reports are forwarded from this city by the wires and other wise statements, many of them, as far from the truth, from the facts, from the real condition of things, from the actual situation at Salt Lake, as it would be possible for even the father of lies to make them.

But the backbone of the new crusade is considerably weakened if not broken, it has been badly overstrained at least, and by and by the hubbaloob will cease, the unnatural excitement will die away, the fever heat subside, another reaction will set in, and the senders of these inflammatory reports will be likely to be crawling around again, whining, "Now don't be too hard upon us, do let us alone, we never meant any harm. It's only a way we have. Of course you are better than we said you were. Everybody knows that." Pity we can't return the compliment, but we really cannot.

THAT PROTEST TO CONGRESS.

To-day we publish the memorial of a number of influential citizens of Salt Lake, etc., to Congress, protesting against the confiscations and misrepresentations contained in the memorial of certain lawyers, urging infirm special Federal legislation affecting Utah. The document is copied from the *Congressional Globe*, and the Washington correspondent of the New York *Herald* says it was presented in the House of Representatives by the Hon. W. H. Hooper, Feb. 17.

MEMORIAL TO CONGRESS.

[Proceedings of the U. S. House of Representatives, Feb. 17.]
Mr. Hooper, of Utah, by unanimous consent, presented the following memorial, which was ordered to be printed in the *Globe*, and referred to the Committee on the Judiciary:

SALT LAKE, UTAH,
February 16, 1873.

To the President, Senate, and House of Representatives of the United States in Congress assembled:

Having read the memorial of the members of the legal profession residing in Utah, and of those who signed it, knowing the same to be in many respects untruthful and unjust, wronging alike the Legislature of the Territory and the citizens, we respectfully beg leave to point out some of its manifold errors and misrepresentations, and humbly suggest to the President and your honorable body, to the honorable gentlemen who signed the memorial, and to the public, why it is that the condition of Utah is exceptional from that of other Territories, and that the memorialists, and if possible trace the source from which the evils flow. The statement and memorial to which we refer is signed and presented, as the language would seem to indicate, by the members of the bar of Utah, but only by a portion of them, many of those who signed it not having read it, nor fully knowing the nature of the statements, and a large portion of the bar being wholly ignorant of very existence. That there are imperfections and omissions in the laws of Utah Territory is undoubtedly true, and we know of no code of laws of which the same thing cannot be said of any other Territory. The truth is, a fact undoubtedly sufficiently proved by the amendments and new laws that crowd alike the statutes of territorial, State and General Government. That there are greater omissions and imperfections in the laws of Utah than in those of other Territories, or that they have occurred through any design or want of attention on the part of the Legislature of Utah, as stated by the memorialists, is certainly untrue, and we most confidently and respectfully submit the statistics to investigation. The memorialists first complain of long-continued and hitherto unchecked abuse of legislative power. Allow us to inquire with what justice this complaint can be made? The Governor of this Territory, appointed by the President of the United States, possesses extraordinary powers, which have been unknown to any other portion of the United States, except New Mexico, since the time of George III. He has the absolute veto power. His powers in legislation are co-extensive and co-equal with those of the Legislature itself, save that he cannot originate any law. Every law that is passed for the people is enacted by and in the name of the Governor, and must receive his sanction and signature before it is voted for any purpose or enrolled among the statutes. (See section two, organic act of the Territory.) All the laws passed by the Legislature must receive the approval of Congress. Congress can at any time annul or disapprove any law or municipal charter. To a common mind, unacquainted with the legendary demand of memorialists, would seem a sufficient check on the Legislature. The memorialists, first, from the beginning the Legislature of Utah has been immoral and sub-

versive of the Federal authority within that Territory; second, that the territorial Legislature has rebelled to deprive the Governor and judges appointed by and representing the Federal Government of all power within the Territory to sustain these propositions; and as proof refer to the statute of 1855, page 29, laws of Utah. This statute, it is claimed, deprives the Governor and Federal courts of their authority, and the memorialists add it is too plain for argument. On examination of the statute referred to, we find (laws of 1855, page 29, section one) that the district courts shall exercise original jurisdiction both in civil and criminal cases when they shall also have a general supervision over all inferior courts to prevent and correct abuses. Section twenty-nine, probate courts shall exercise original jurisdiction both civil and criminal, and as well as chancery as at common law, when not prohibited by the same laws and regulations as regards practice as the district courts. (Laws of 1855, page 30, section thirty of the same act provides for appeals from decrees or decisions of the probate court to the district court.)

The memorialists claim that these courts of some of the Territory have been deprived of jurisdiction to them by the organic act and to confer the jurisdiction on the probate court. A more correct construction of even these sections would show that it was only the intent of the Legislature to confer on the probate courts concurrent jurisdiction with the district courts of civil and criminal matters of the Territory; but if there is any doubt in regard to the construction of these sections this doubt is set at rest and made too plain for argument by the first section of chapter four, page 34, which provides all courts of the Territory shall have common-law and equity jurisdiction. That the Legislature did not intend to take away any of the powers of the district court is further proved and illustrated by the fact that they provided for an appeal from the district court. See sections one and thirty of the laws of 1855, pages 29 and 30. Under these sections the power of the district court over inferior courts is almost absolute. It is plain from the examination of these sections that the Legislature did not intend to deprive the district court of any of its jurisdiction, but that it did by direct legislation confer upon it jurisdiction in criminal cases in territorial matters, and in civil cases of the common law, and equity jurisdiction, and did not intend to deprive the probate court of any of its powers by virtue of the provisions of the organic act. When we add that no attorney or court has ever sought to any way to question the jurisdiction of the district court, the enormity of the misrepresentations on the part of the memorialists in charging the Legislature with treasonable intentions to nullify the jurisdiction upon the probate court, we wish to submit the following propositions:

First, had the Legislature under the organic act conferred the jurisdiction upon the probate court; second, if they had the right to confer the jurisdiction, was it wise and proper legislation? In support of the affirmative of the first proposition we would submit that the source of legislative, executive, and judicial authority in the Territory is in Congress, and Congress, to enable the people of this Territory to have full protection of life and property, has given them a constitution, or charter, through the organic act, by which the people are empowered to legislate upon all rightful subjects consistent with the Constitution of the United States and organic act. We think that the Legislature of the probate courts is clearly given by the organic act; but as the question here is not whether we will admit the argument that the organic act is not clear on this subject. Under these circumstances it is a rule of construction known to every lawyer, that the intention of the Legislature passing the law is to be ascertained and must govern in construing the law to determine the intention of Congress.

It is pertinent to inquire for what purpose does the Constitution of the United States confer on Congress the right to provide a government for the Territory? Was it because the Government was to derive any profit therefrom? Clearly not, as the government of the Territories is an expense and not a revenue to the Government. It could not be for the sake of governing, or, in other words, for the glory thereof. It was not because the Government wished to deprive the citizens, but to aid and assist them in establishing a government of their own. The district judges were not sent to Utah for the purpose of depriving the citizens of any right or privilege, but for the purpose of aiding in securing these rights and privileges and administering the laws both of Congress and the Territory. The Legislature till the Territory should be able to establish courts of its own. In the language of Chief Justice Chase, (Clinton vs. Engelbrecht, 12 Wall. 606, 1867) "The various governments for portions of territory of the United States have been organized as ever been that of giving to all the people of the territory self-government, consistent with supremacy and supervision of national authority and with certain fundamental principles established by the Constitution." The Legislature all omissions, discrepancies, or other evident imperfections which fall under their observation from time to time. (Section 4, Judiciary act of 1855, page 29.) The several Territories have taken upon themselves the expense of courts in territorial business, according to their respective abilities, by proper legislation, all of them establishing local tribunals, or nearly all of them have conferred jurisdiction upon the probate court, thus the United States provide (see page 53, section 27) that the probate courts of the said several counties shall have concurrent jurisdiction with the district courts in all civil cases, and equity where the debt or sum demanded shall not exceed \$2,000.

The organic act of Colorado Territory is similar to our own in the matter of authority conferred on the territorial Legislature. Like statutes under similar organic acts have been passed by all the Territories since the formation of the Government, and although Congress has possessed the absolute authority to annul all territorial laws, it has never manifested any disposition to interfere with the laws of this Territory. They have rarely been questioned by Congress or by the people. It is not, under these circumstances, fair to suppose that it was the intention of Congress to give to the Legislature the right to legislate on the subject of the probate courts of such legislation? Such, indeed, is the language of Chief Justice Chase in the opinion above referred to. It will not be disputed that if the Legislature of the Territory could extend the jurisdiction of the probate court to the amount

of two thousand, it may extend to ten thousand, or one hundred thousand dollars, or give it unlimited jurisdiction. Principles are not affected by amount of jurisdiction. If the Legislature having been established, it may confer such jurisdiction as in its judgment seems necessary for the best interests of the people. Congress in conferring the powers of the justice's court, by the organic act, has limited their jurisdiction to cases where the sum demanded does not exceed \$2,000, and prohibited them from exercising jurisdiction where the title for boundary of land is in dispute. In the same connection, and in the same section, it provides for the jurisdiction of the probate court shall be as limited by law. This section shows that the mind of Congress was especially directed to the jurisdiction of the different courts and the fact that it limited the Legislature in their power to confer jurisdiction on the justice's courts and did not limit the power of conferring jurisdiction on the probate courts proves conclusively that they did not intend to limit it. The act says the jurisdiction of the probate court shall be as limited by law. As limited by law of Congress? No; there is no law of Congress on the subject. By the law of Vermont vs. Massachusetts, 182, it is undoubtedly intended that the law limiting the jurisdiction of the probate court, of itself, limits and defines its course, duties and jurisdiction. If the term probate court is so well understood, why is it necessary for this organic act to pass laws regulating and defining the powers of such courts? All that it would be necessary for the Legislature to do would be simply to provide for the election of a probate judge, and the court springs into existence at all points exactly as the court of probate regularly appointed and fully prepared to administer on the estates of the deceased. The term probate court never has any such restricted jurisdiction under any code of laws in the United States. No such court as the probate court is known to the common law. It is a creature of the organic statute, with jurisdiction, as the Legislature of its respective locality has seen fit to confer upon it. Probate court in this sense means a court having jurisdiction in all criminal matters below the grade of felony, and in civil matters to the extent of \$500, and the partition and dower of real estate. Probate court in Colorado Territory means a court that has jurisdiction in criminal matters, and common law and equity jurisdiction where the debt or sum demanded does not exceed \$2,000. Probate court in Nevada means a district court that has unlimited jurisdiction in all things. Probate court in Wyoming territory means a court having jurisdiction in criminal and civil matters, and so we shall find the term has a different significance in every State and Territory.

What is in a name? Congress established a court here, and called it the Salt Lake court, it might with equal propriety be called that of some of the savages had no other than maritime jurisdiction over the waters of Salt Lake. Having shown that Congress has given to the Legislature the right to confer the jurisdiction upon the probate court, we now address ourselves to the second proposition: was it wise and proper for the Legislature to confer common law and equity jurisdiction on the probate court? The Territory of Utah extends three hundred and sixty miles north and south and two hundred and sixty miles east and west, and now contains a population equal to that of any other two Territories of the United States. Its inhabitants are scattered over a vast and fertile land. For this Territory and population Congress has provided three courts: first district court, held at Provo; second district court, held at Salt Lake City. Of these courts the first two mentioned hold one term a year, and the last mentioned holds two terms a year. The first and second district courts have been in session up to within the last two years, and have averaged two days in a year; and there has been a year or more of times when no district court has been held outside of Salt Lake. The district court of Salt Lake is in session but a small portion of the time. Of the judges appointed to the first and second districts, none have ever seen the place appointed for holding their courts, and none of them have ever held a session. Consequently, any application for judicial interference, either in civil law, criminal law, or chancery jurisdiction, has been wholly impracticable. But suppose these courts had been regularly sessioned, and a city of two thousand inhabitants, possessing large agricultural and manufacturing interests, is situated in the southern portion of the Territory. In the second judicial district, and one hundred and twenty miles from Beaver, where the court is held. The facilities for traveling would require a citizen of St. George to arrive at the court three days. Would it not, under these circumstances, be highly inconvenient for him to transact any business in the district court? A citizen of St. George, traveling to Chicago quicker and cheaper and more comfortably than a citizen of St. George, could travel from his home to Beaver, and then to the court, and the citizen of Beaver would consider it something of a hardship should he be obliged to transact all his business at Chicago; and he would be equally inconvenienced should he be asked to seek some local tribunal. Other towns in the Territory are similarly situated to that of St. George, and the same kind of inconvenience would befall them. They are wholly without protection by judicial authority in property or person.

Under these circumstances, can it be said that the Legislature of Utah acted wisely in conferring jurisdiction on the probate court? Would they have fallen far short of their duty had they neglected to pass around their infant settlements so widely separated, such protection as the probate courts have afforded? It is said by the memorialists the statute was purposely neglected for twenty years, to pass a wholesome general system of laws necessary to the welfare of a civilized community. It is a well-known fact that prior to the construction of railroads in this Territory, the people of Utah were almost exclusively engaged in agriculture and pastoral pursuits. With simple habits and small property, a people thus situated needed but few and simple laws, which the Legislature from time to time, as their wants and necessities demanded, enacted; and when the political economy of the Territory became so changed by the growing mining, commercial, railroad and other interests incident thereto as to require additional legislation, which both the Legislature and the people were unable to demand it, and the Legislature has responded most willingly and promptly to the necessities of the people, and has enacted laws of great value and well-considered ends of laws passed February 17, 1870, will fully attest, and although the capital of this Territory is far removed from great commercial centers, and the Legislature is composed of men of great legal minds, a few of the memorialists alone excepted,

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