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A. KIMBALL, Gen. Supt.
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U. P. R. R.

—:o:—

UNTIL further notice trains will leave and arrive at Ogden daily as follows:

LEAVE.

Daily Express..........10:20 a.m.
Mixed..........5:00 p.m.
Freight..........8:30 a.m.

ARRIVE.

Daily Express..........6:15 p.m.
Mixed..........6:40 p.m.
Freight..........2:15 p.m.

Daily connections made at Ogden with Central Pacific R. R., and with Utah Central road for Salt Lake City and all points in Southern Utah.

At Bryan with stages for Sweetwater mines.

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Tickets for sale to all points east at Banking House of McCornick & Co., Salt Lake City; also at Union Pacific Railroad Ticket Office in Ogden, at which office berths on sleeping cars can be secured.

THOS. L. KIMBALL,
Gen'l Ticket Agent, Omaha.
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UTAH CENTRAL RAILROAD.

Pioneer Line of Utah.

On and After November 4th, 1878.

Name of Station.	No. 1 Passenger.	No. 3 Passenger.	Fares.
Trains leave Salt Lake	7 00	3 40	
*Wood's Cross	7 25	4 08	60
Centreville	7 33	4 16	75
Farmington	7 50	4 33	1 00
Kaysville	8 12	4 52	1 25
Arrive at Ogden	9 00	5 40	2 00

Name of Station.	No. 2 Passenger.	No. 4 Passenger.	Fares.
Trains leave Ogden	9 40	6 20	
Kaysville	10 31	7 10	1 00
Farmington	10 52	7 31	1 35
Canterville	11 04	7 44	1 50
*Wood's Cross	11 13	7 53	1 75
Arrive at Salt Lake	11 40	8 20	2 00

*Passing places.

MIXED TRAINS

WILL RUN DAILY,
(Sundays Excepted.)

Leaving Salt Lake City at 8.40 a.m., arriving in Ogden at 11.50 a.m.; Leaving Salt Lake at 5.05 p.m., arriving in Ogden at 8.20 p.m., leaving Ogden at 6.50 a.m., arriving in Salt Lake City at 10 a.m., leaving Ogden at 3.30 p.m., arriving in Salt Lake City at 45 p.m.

☞ For all information concerning Freight or Passage, apply to

JAMES SHARP,
General Freight and Ticket Agent
JOHN SHARP,
Superintendent.

UTAH SOUTHERN RAILROAD

On and after Dec: 13th, 1876.

Going South.

Name of Station.	No. 1 Passenger.	No. 3 Freight.	No. 5 Freight.	Fare.
Trains leave	A. M.	A. M.	P. M.	
Salt Lake	7 00	6 10	2 00	
Little Cottonwood	7 28	6 45	2 25	50
Junction	7 48	7 15	2 55	75
Arrive at Sandy	7 53	7 28	3 15	1 00
Leave Sandy	8 03			
Draper	8 15			1 25
Lehi	9 00			1 75
American Fork	9 20			1 80
Pleasant Grove	9 32			2 00
Provo	10 15			2 50
Springville	10 35			2 70
Spanish Fork	10 51			3 00
Payson	11 22			3 50
Santaquin	11 43			4 00
Arrive at Terminus	M. 12 00			4 00

Going North.

	No. 2 Passenger.	No. 4 Freight.	No. 6 Freight.	Fare.
Trains leave	P. M.	A. M.	P. M.	
Terminus	12 30			
Santaquin	12 57			25
Payson	1 17			50
Spanish Fork	1 49			1 00
Springville	2 05			1 25
Provo	2 25			1 50
Pleasant Grove	3 08			2 00
American Fork	3 20			2 10
Lehi	3 32			2 25
Draper	4 22			2 75
Arrive at Sandy	4 37			
Leave Sandy	4 47	9 15	5 00	3 00
Junction	4 51	9 25	5 10	3 25
Little Cottonwood	5 11	9 55	5 40	3 50
Arrive at Salt Lake	5 40	10 30	6 15	4 00

Nos. 1 and 2 will be run daily.
Nos. 3, 4, 5 and 6 will be run daily, Sundays excepted.

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JOHN SHARP,
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OFFICIAL

Arrivals and Departures of Mails.

ARRIVALS.

East—Through mail, daily..........8 40 p m
Alta, daily..........5 50 p m
Parley's Park, Big Cottonwood, and Wanship Tuesdays, Thursdays and Saturdays..........5 00 p m
Park City, daily except Sunday..........5 00 p
Summit and Wasatch counties, Tuesdays and Thursdays..........8 40 p m
Rich county, Tuesday, Thursday and Saturday..........8 40 p m
Morgan county, daily..........8 40 p m
North—Davis county, daily..........11 40 a m
Weber county, daily..........8 40 p m
Ogden, semi-daily 11 40 a m & 8 40 p m
Parley's Park, Big Cottonwood and Wanship, Mon- Fridays..........7 00 a m
ties, daily..........8 40 p m
Corinne and Kelton, daily..11 40 a m
Idaho and Montana, daily...8 40 p m
Boise City and Idaho City, daily..........11 40 a m
West — Nevada, California, Oregon, etc..........11 40 a m
Ophir, Tooele, Stockton, Jacob City, &c..........2 20 p m
Bingham Canyon, daily..........8 30 p m
South—From Beaver and intermediate points, daily..........5 50 p m
Pioche, Star and San Francisco districts, daily..........6 50 p m
St. George and points south of Beaver, alternate days 5 50 p
Sanpete and Sevier counties, daily, except Monday....5 50 p m
Cedar Valley, Fairfield and Tintic mining district, Tuesdays, Thursdays and Saturdays..........5 50 p m

DEPARTURES.

East—Through mail, daily..........6 30 a m
Alta, daily..........6 30 a m
Parley's Park, Big Cottonwood and Wanship, Mondays, Wednesdays and Fridays..........7 00 a m
Park City, daily, except Sunday..........7 00 a m
Summit and Wasatch counties Mondays and Fridays 6 30 a m
Rich county, Mondays Wednesdays and Fridays..........6 30 am
Morgan county, daily..........6 30 a m
North—Davis county, daily..........6 30 a m
Weber county, daily..........6 30 a m
Ogden, semi-daily 3 30 p m & 6 30 a m
Cach and Box Elder counties, daily..........6 30 a m
Corinne and Kelton, daily.....3 30 p m
Idaho and Montana, daily..6 30 a m
Boise City and Idaho City, daily..........3 30 p m
West—Nevada, California, Oregon, &c., daily..........3 30 p m
Ophir, Tooele, Stockton, Jacob City, &c., daily......6 30 a m
Bingham Canyon, daily.....6 30 a m
South—For Beaver and intermediate points, daily..........6 30 a m
For Pioche, Star and San Francisco districts, daily 6 30 a m
For St. George and points south of Beaver on alternate days..........6 30 a m
For Sanpete and Sevier counties, daily, except Saturdays..........6 30 a m
For Cedar Valley, Fairfield and Tintic mining districts, Tuesdays, Thursdays and Saturdays 6 30 am

OFFICE HOURS.

General Delivery open from 8 a.m. m. Sunday, 12:30 to 1:30 p.m.

Money Order and Register department rom 9 a.m. to 5 p.m.

Outside door open from 6 a.m. to 10 p m

J. T. LYNCH, Postmaster.

NOTICE.

In the Probate Court in and for Salt Lake County, Territory of Utah:

In the matter of the Estate of EZRA OAKLEY, deceased.

PURSUANT to an order of said Court in said matter, notice is hereby given, that on Saturday, the fifteenth day of February, A. D. 1879, at 10 a. m. of said day, at the County Court House in Salt Lake City, has been appointed by said Court the time and place for the hearing of a petition filed in said Court, by Albert Best, praying that a certain document therewith filed, purporting to be the last will and testament of the said deceased, be admitted to Probate, and that letters testamentary be issued to him, at which time and place all persons interested may appear and contest the Probate of said will.

Salt Lake City, Feb. 1, 1879.

D. BOCKHOLT,
Clerk Probate Court, Salt Lake County, Utah.
d61 14t

EVENING NEWS.

Tuesday, • • February 18, 1879.

JUDGE BOREMAN ON THE TOOELE CASE.

DISSENTING OPINION.

In the Supreme Court of Utah Territory, January Term, 1879. F. M. Lyman, respondent, vs. Enoch F. Martin et al., appellants. Appeal from the Third District Court.

Boreman, Justice, delivered the following opinion, dissenting from the majority of the Court:

The respondent applied to the District Court for a mandamus to compel appellant Martin, Clerk of the County Court of Tooele County, and the other appellants as members of the said Court, to examine and canvass election returns, and declare who were elected. A demurrer to the affidavit (treated as a complaint) was overruled, and a demurrer to the answer was sustained. The appellants electing to stand upon their answer, the Court below granted the peremptory mandamus, and thereupon appellants brought the case to this Court.

The right to the mandamus must clearly appear. Under the former practice the alternative writ was regarded as the foundation of all subsequent proceedings in the case, and resembled, in this respect, the declaration in an ordinary action at common law. It was necessary that upon its face a clear right to the mandamus be shown, and the material facts on which the applicant relied be strictly set forth, so that they may be admitted or traversed by the return.

Great strictness is requisite in this respect.

(High's Extraordinary Legal Pleadings, sec. 537-538.)

By tacit consent the affidavit has been treated as the complaint and the first pleading in this case. This is in accordance with the rule as laid down in California, and also recognized by this Court in a former case.

(People vs. Supervisors, 27 Cal. 665, Chamberlain vs. Warburton, 1 Utah 267).

The affidavit, as a complaint, therefore, is to be treated as the alternative writ formerly was. It is a well settled rule that a demurrer reaches back to the first fault committed by either party; and on demurrer to the return or answer, it is therefore competent for the defendant to avail himself of any material defect in the complaint or affidavit.

(High's Extraordinary Remedies, §493). State vs. McArthur, 23 Wis. 427. Gould's Pl. Ch. 9, Sec. 36. 1 Noah's Pl., 4th Ed., p. 260. People vs. Booth, 32 N. Y. 327).

And if the answer be obnoxious to a demurrer, yet if the complaint is defective in substance, judgment is properly given for defendant. (Id., §493.)

When, therefore, the demurrer in this case is interposed to the answer, this demurrer reaches back to the complaint or affidavit; and it is claimed that the affidavit is defective in substance.

1st. The complaint (the affidavit) does not allege or show that it was the duty of the appellants to do the various things which it is asked that they may be compelled to do. The simple allegation that the appellants, after demand, refused to do certain things "as required by law," is not sufficient. What law is referred to? Some statute of the United States or of the Territory? Or does it refer to the common law? The allegation should be definite, and the law should be designated. And I do not think that a simple designation even of the law would be sufficient, unless sufficient was alleged, aside from this, to sustain the Relator's case. (High's Ex. Rem., §536-538.) The affidavit should have contained all of the facts which go to constitute the duty and which induce the obligation on the part of the defendant to perform the act sought to be performed. (Id., §536.)

In this case now before us, the affidavit contains none of the facts going to show that it is the duty of appellants to do the things which they are now asking the court to compel them to do. It does not even refer to any statute. And it cannot be claimed that the mandamus should be granted in anticipation of a supposed omission of duty. An actual omission of duty must be shown. (High, Ex. Rem. §12, and cases cited there; Id., §39 and 41.) For this failure therefore, the ground for a mandamus does not appear.

2d. But if it be assumed that enough is alleged as to the duty of the appellants in the premises, by the simple recital "as required by law," and the law refers to "an act providing for the registration of voters," etc., "approved 22d February, 1878," we then must consider whether that be a valid law, as that is one of the points raised and passed upon in this case.

The registration act referred to provides that the assessor "shall ascertain upon what ground such person claims to be a voter, and he shall *require* each person entitled to vote and desiring to be registered to take and subscribe in substance the following oath or affirmation:

Territory of Utah, } ss
County of——.

I, ——, being first duly sworn, depose and say, that I am over 21 years of age, and have resided in the Territory of Utah for six months, and in the precinct of —— one month next preceding the date hereof, and (if a male) am a "native" or "naturalized" (as the case may be) citizen of the United States, and a tax-payer in this Territory, (or if a female) I am "native born" or "naturalized," or the "wife," "widow" or "daughter" (as the case may be) of a native born or naturalized citizen of the United States; and the same section further provides that "upon the receipt of such affidavit, the Assessor, as aforesaid, shall place the name of such voter upon the Registration List of the voters of the county." (Sec. 1.)

This statute requires that each person entitled to vote and desiring to be registered, shall take this oath. If his or her name be not upon the registry list, his or her "ballot shall be rejected." (Sec. 13.) It avails a party nothing that he is "entitled to vote," he will not be allowed to vote unless he be registered, and will not be allowed to register unless he take that oath. His right, and the right of every citizen to be registered and to vote depends upon his taking the oath. Every part of that Registration Act is pivoted on the oath. If the oath falls, the whole Registration Act falls; for there is no provision made for any registration that does not depend upon that oath.

The question then for consideration is whether the oath be valid or not?

Our "Organic Act"—our charter—provides that citizens alone can vote. (Sec. 5 of the Organic Act.) If this provision has since been modified by United States Statute (U. S. R. S. § 1860) giving the Legislature power to allow aliens to vote upon declaring their intention to become citizens, the principle is not changed in regard to the oath; for our Legislature has not availed itself of this modification and has never passed any act allowing aliens to vote upon "declaring their intentions" to become citizens.

The Legislature can have no power to do that which the laws of Congress say the Legislature shall not do. There might be sometime a disagreement as to what the Legislature might do when the matter was not by law of Congress forbidden; but there can be no possible disagreement when the power is in express words denied to the Legislature. The law of Congress is our Constitution in the matter. The Revised Statutes of the United States (Sec 1860) provides that the Legislatures of the Territories may fix the qualifications of voters, "subject, nevertheless, to the following restrictions upon the power of the Legislative Assembly, namely," &c., and the first restriction is that the right of suffrage shall be confined to citizens and those who have declared their intention to become such. This is in effect a constitutional prohibition upon the Legislature, and if the Legislature attempt to extend the right of suffrage beyond these named limits their action is nugatory. The Legislatures, as I have said, have not availed themselves of the power to extend the right of suffrage to "those who have declared their intentions" to become citizens. Therefore, no person, male or female, can vote in this Territory, unless such person be a citizen. The conclusion is, to my mind, irresistable, and I can see no possible way to avoid it.

The territorial statute prescribing the qualifications of voters, uses language to which that of the oath in the Registration law exactly corresponds. The assessor then, in ascertaining who are "entitled to vote," looks to the statute, and the language of the statute and that of the registration oath being the same, it follows that the persons possessing the qualifications specified in the oath and who will take the oath, will be allowed to register and to vote.

The oath excludes all male persons from voting who are not "native born" or "naturalized," yet it allows female persons to register and vote who are neither "native born" nor "naturalized." The evident intention was to evade or ignore the law of Congress. If this were not the purpose, why not stop with the words "native born or naturalized" when referring to female persons, as was done when the language referred to male persons?

The daughter of a naturalized citizen is not made a citizen by her father's naturalization, any more than a son, unless she was under 21 years of age at the time of her father's naturalization; and yet this Territorial statute and oath allow her to be registered and to vote. She has no more right to that privilege than a son, and the Legislature had no authority to grant it to either. This cannot be deemed an unimportant matter, when we remember that two-thirds, or nearly so, of the population of this Territory, according to the last census, were of foreign birth or the children of parents who were of foreign birth.

This act, without any restrictions or limitations, allows the wives of citizens to vote; yet all wives of citizens are not citizens.

The Revised Statute of the United States (Sec. 1994) says: "Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

Could a woman who has been a resident of this country less than five years be "lawfully naturalized?" If not, then the fact of her being a wife, will not make her a citizen. I am not unmindful of the limitation made in Kelly vs. Owen (7 Wall, 496,) whereby the restrictive clause in the last section referred to, as it then stood, only limited the application to free white women. In that case the limitation hung upon the words, "under existing laws," and those words have been left out of the later statute. And not only so, but the limitation has also been expressly negatived by Sec. 2169 of the United States Revised Statutes, which provides that the naturalization laws shall apply to persons of African birth or descent. If the hook upon which the court in that case hung its exception or qualification, has been stricken out and also expressly negatived by statute, and yet the clause, shorn of those qualifying words, "under existing laws," be allowed to stand and be embodied in the revision of the laws, we must conclude that there was some other matter sought to be reached, other than of the applicant being a free white woman. In the case referred to, (Kelly vs. Owen,) the parties to the action had all been residents of this country five years, and hence no question on that point did or could arise. The ruling there simply resolves itself into this, that all the parties being of five years residence, then and in that case the only restriction was that of color. An examination of the decision will fully bear out this view.

In the case of Minor vs. Happersett, (21 Wall, 162,) the Supreme Court of the United States dwell at considerable length upon the subject of native born women being citizens, and refers to the fact that the Government has also made provision for alien women to become citizens. It refers to the same section as above given to show this; and there is nothing whatever in the opinion in that case not in harmony with the view I have given of the section.

The conclusion to my mind is that no married woman of foreign birth can be allowed to vote in this Territory by reason of such marriage, until she has been a resident of this country for five years, the time required for naturalization of males, otherwise the law would not be uniform, and would be unjust and inequitable, and in violation of the United States Statutes — our Constitution in such cases. Congress never contemplated such inequality.

The registration act referred to allows "widows" of citizens to vote, when all widows are not citizens, for the same reason that all "wives" cannot be such. As to the citizenship itself of widows, there is this exception—that if their husbands had declared their intentions to become citizens, then the widows would be citizens "upon taking the oaths prescribed by law." (Rev. St. of U. S.; Sec. 2168.) But this exception does not apply here, for the reason that a "widow" does not have to swear that she is a citizen, nor show that she has taken the "prescribed oath."

The registration oath not only allows "wives," "widows" and "daughters" to vote, who are not citizens, but it, on the other hand, excludes men from voting who are citizens. A male person of foreign birth who, when his father was naturalized was under twenty-one years of age, is by the act excluded from voting unless he be naturalized himself. It requires all male persons to be native born or naturalized in order to vote, notwithstanding it allows female persons to vote without being either naturalized or native-born.

This Territorial act not only confines the male voters to those who are native-born or naturalized, but it also imposes an additional burden upon them that is not imposed upon the female voters. The male voters are required to be tax-payers. Such a discrimination is unjust and unreasonable. The Court, in the majority opinion, so holds, but says the oath is nugatory only to that extent. The court, as I think, has no right or authority for doing this. It is not an analogous instance to that of a statute which contains various grants, not dependent upon each other, part of which might be stricken out and the residue stand, and in giving of those stricken out, the Legislature had transcended its authority. But it might be more analagous to a grant based upon several conditions, all of which are to be complied with before the grant accrues. Here several things have to be sworn to before the party applying will be allowed to register and vote, and there is no authority to register such person if any one of those things specified are left out. Therefore, if he cannot swear to every one of the matters required by the oath, he is excluded from registration and voting. His right to vote being based upon an oath of specific provisions, the court cannot say that he cannot be registered and vote by taking part of that oath. The oath, as given and as a whole, must be taken. If one of its provisions fails, that which remains is not the oath required for registration. And any attempt by the court to change the oath and authorize a different one, is, in my judgment, simply legislating.

But, I have, I think, shown the oath in question is not defective in merely one particular. There are defects in almost every branch of it—defects that are incurable by this or any other court. The branch applying to "wives" is thus defective, also that applying to "widows," also that applying to "daughters," and that applying to male persons.

A registration act founded upon an oath so bristling with unjust discriminations, ought not to stand. An election carried on under it is a fraud upon the rights of the people.

One able text writer says that "all regulations of the elective franchise, must be reasonable, uniform and impartial." (Cooley's Const. Lim. p. 602). A statute that is not so is utterly void. (Monroe vs. Collins, 17 Ohio St. R. 665).

The statutes of the United States stand as our constitution in this matter. The oath and registration act being in direct violation of the statutes of the United States, are unconstitutional, null and void. They are not only void for the reason stated, but also because they are against the plain and obvious principles of common right and common reason. Whenever any law is calculated to operate against these principles, it is null and void. (Wilkinson vs. Leland, 2 Peters; 657; Terrett vs. Taylor, 9 Cranch 43, Cooley's Const. Lim. p. 166 n. 11).

That this oath is against common right and common reason, is manifest to every one.

There are two or three minor points upon which I am unable to unite with the majority of the court, but it is not necessary to note them.

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William Thorne, 7th ward, "
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Samuel A Woolley, 9th ward, "
Adam Speirs, 10th ward,
Alexander McRae, 11th ward,
Alexander C Pyper, 12th ward,
Edwin D Woolley, 13th ward,
Thomas Taylor, 14th ward,
Joseph Pollard, 15th ward,
Frederick Kesler, 16th ward,
John Henry Smith, 17th ward,
Orson F. Whitney, 18th ward,
Richard V Morris, 19th ward,
John Sharp, 20th ward,
Andrew Burt, 21st ward,
A G Driggs, Sugar House
Lewis H Mousley, Farmers' ward
Reuben Miller, Mill Creek
John Neff, East Mill Creek
D B Brinton, Big Cottonwood
J S Rawlins, South Cottonwood
Ismael Phillips, Union
Solomon J Despain, Granite
I M Stewart, South Willow Creek (Drape
William A Bills, South Jordan
James Crane, Herriman
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George D Snell, Spanish Fork
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Winslow Farr, 3d ward, "
N C Flygare, 4th Ward, "
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F A Hammond, Huntsville
Josiah M Ferrin, Eden
P G Taylor, Harrisville
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