

UTAH CENTRAL RAILWAY COMPANY.

PIONEER LINE OF UTAH.

NEW TIME CARD—IN EFFECT JUNE 1st, 1882.

PASSENGER TRAINS leave Salt Lake City daily for Ogden, and Intermediate Stations, at 7 a. m. and 3.40 p. m.; arrive in Ogden at 8.40 a. m. and 5.30 p. m.

PASSENGER TRAINS leave Ogden daily at 10.10 a. m. and 6.15 p. m.; arrive in Salt Lake at 11.50 a. m. and 7.55 p. m.

SPECIAL PASSENGER TRAIN

Leaves Salt Lake daily for Ogden, and Intermediate Stations, at 7 a. m., connects with B. O. R. W. & J. R. R., S. L. & Western Railway, Utah and Pleasant Valley R. R., and Pleasant Valley Railway, arrives in Ogden at 12.10 p. m.

Leaves Ogden at 1.30 p. m., Nephel, 2.00; Provo, 4.00; Lehi Junction, 5.00; Sandy, 5.45; Junction, 5.50; German, 6.05; Franchly, 6.05; arrives in Salt Lake at 6.30 p. m.

REGULAR PASSENGER TRAINS leave Salt Lake at 3 p. m. for Frisco, Milford and Intermediate Stations, connects with Sligo at Frisco, Nevada and Arizona.

Leaves Frisco at 4.00 p. m.; Milford, 4.10 p. m.; Jun, 4.30 a. m.; Nephel, 5.05; Provo, 7.25; Pleasant Grove, 7.55; American Fork, 8.07; Lehi, 8.15; Draper, 9.00; Sandy, 9.15; Junction, 9.15; Lovendahl's, 9.27; German, 9.35; Franchly, 9.35; arrives in Salt Lake at 10 a. m.

FREIGHT TRAINS run as usual.

FOR FULL PARTICULARS SEE TIME CARDS.

FRANCIS COPE, JAMES SHARP, JOHN SHARP,
Gen'l Frt & Pass Agt. Asst' Gen'l Supt. Gen'l Supt.



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EVENING NEWS.

Friday, June 23, 1882.

MANDAMUS.

THE WERRER COUNTY PROBATE JUDGESHIP.

ARGUMENT OF COUNSEL FOR THE INCUMBENT.

(Continued.)

There was no vacancy to fill; hence the Governor could appoint; therefore, his attempt to fill a vacancy was a mere pretense, and his commission a wholly worthless document.

By the Territorial statute of Feb. 20, 1874, Compiled Laws, p. 123, sec. 173, it is provided: "That on the first Monday in August, 1882, and every two years thereafter, there shall be elected by the qualified voters of the several counties of Utah Territory, one Probate Judge for each county, whose term of office shall be for two years and until his successor is duly elected and qualified."

By this statute the term is not only for two years, but until his successor is duly elected and qualified; hence, the pretermittent election of a Probate Judge for a county, because the term did not expire at the biennial election, nor until a successor was duly elected and qualified, so that a duly elected and qualified successor was essential to terminate the term. And this provision in the statute, so far as it relates to the Probate Judge, has been held to be a mandatory provision preventing a vacancy until such successor was duly elected or appointed and qualified, and the person giving notice of resignation, being based on public policy and private rights.

Without stating the many phases under which the question has been presented, and the many reasons given for such a rule, the following authorities are referred to as among the prominent ones by the Supreme Court of the United States and of the States:

6 Wallace, 293, United States vs. Addison.

25 Ohio St., 583, State vs. How.

87 California, 614, People vs. Tilton.

6 Penn. St., 513, Commonwealth vs. Hanly.

If the pretermittent election could not be held, did the Governor have authority to fill the vacancy? The Governor of the Territory of Utah is authorized to appoint officers in said Territory, to fill vacancies, and to exercise the powers of the courts, in the event of a failure to elect on the first Monday in August, Eighteen Hundred and Eighty-two, in consequence of the provisions of the statute, an act to amend section fifty-three hundred and fifty-two, of the Revised Statutes of the United States in reference to bigamy and other offenses, approved March 3, 1882, to hold their offices until their successors are elected and qualified under the provisions of said act, and until the expiration of the term of office of any said officers, shall not exceed eight months."

What is the Governor authorized to do by the terms of this act? The act provides that the Governor may fill the vacancy by a failure to elect on the first Monday in August, 1882, to hold their offices until their successors are elected and qualified under the provisions of said act, and until the expiration of the term of office of any said officers, shall not exceed eight months."

It is held that the Governor is authorized to fill the vacancy by a failure to elect on the first Monday in August, 1882, to hold their offices until their successors are elected and qualified under the provisions of said act, and until the expiration of the term of office of any said officers, shall not exceed eight months."

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These two sections taken together, are simply declaratory of the common law, and so held by the Supreme Court of California on an identical statute; see 44 Cal., 119, 120, 121, 122, 123, 124, and 125, and on Extraordinary Remedies, section 80, quotes this case approvingly, and says: "The Court will construe the latter section as a limitation upon the powers conferred by the former, and not as an enlargement of those powers."

The Court will, therefore, in administering the law, be governed by the same conditions and limitations which prevailed at common law, and will not leave the writ in cases where another adequate remedy is provided by law.

Is there an adequate remedy at law? In section 801, High on Extraordinary Remedies, says: "The modern information in the nature of *quo warranto*, may be defined as an information, originally in Latin, issued by a Court of competent jurisdiction by the public prosecutor, for the purpose of correcting usurpations, misuses, non-user of a public office or corporate franchise."

And in section 803, High says: "It is yet a strictly civil proceeding, resorted to for the purpose of testing a civil right, by trying the title to an office or franchise, and ousting the wrongful possessor."

Is there a public prosecutor authorized to file such information on the relation of a private person? By section 802 of the United States statute of June 23rd, 1874, known as the Poland Bill, it is made the duty of the State Attorney for this Territory to attend all the courts of record having jurisdiction of offenses under the Territorial and United States laws, and "perform the duties of a public prosecutor in all criminal cases."

By the Territorial statute of February 17th, 1876, Compiled Laws, section 802, it is made the duty of the State Attorney to perform the duties of a public prosecutor, and when carried to the District Court, "may aid in conducting the prosecutions."

The United States and county attorneys each have the right to appoint assistants, so there was no lack of a public prosecutor.

18 Mich., 385, People vs. Dargitt.

3 Oregon, 230, Warner vs. Myers.

And this doctrine is fully sustained by the Appellate Court of New York:

78 N. Y., 329, People, ex rel vs. East.

In High, section 49, it is said: "In determining the extent to which the Courts may properly interfere by mandamus with questions relating to the title and possession of public offices, it is necessary to recur to an important principle... which may be properly termed the controlling principle governing the entire jurisdiction by mandamus. It is that in all cases where other adequate and specific remedies exist at law, or in equity, mandamus is not granted. Applying this principle to cases where relief has been sought to determine disputed questions of title to the possession of public offices, the courts have almost uniformly refused to lend their aid by mandamus, since the remedy by information in the nature of *quo warranto* is justly regarded as the most appropriate and efficacious remedy for testing the title to an office, as well as the right to its possession and exercise of the franchise."

And the rule may now be regarded as established by an overwhelming current of authority, that where an office is lawfully filled by an actual incumbent, exercising the functions of the office *de facto*, and under color of right, mandamus will not be granted to determine the title to another claimant, nor to determine the disputed title."

In note 1, he refers to cases from New York, Nebraska, Georgia, Michigan, Missouri, Arkansas, Illinois, Minnesota, Pennsylvania, and several English authorities, and concludes that the rule is well established, leaving but two States as recognizing the proceedings by mandamus, and possibly those two governed by their own peculiar statutes.

So far only the demurrer to plaintiff's complaint has been considered, and it is now to be seen if there was an adequate remedy by which the title to the office could be tried, the demurrer should have been sustained, and the proceeding dismissed, this leaves entirely out of view the criminal proceedings authorized against an usurper of an office.

(To be continued.)

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