THE EVENING NEWS.

Wednesday, - - February 19, 1873.

The Mormons—Once More.

It is said that in a certain California city, where the newspaper proprietors are tied up with the various rings which afflict this country, editorial writers have the standing order—"When in want of a topic pitch into the Mormons." Just now, this is a good part of our National administrative policy. The Executive and Congress, when in want of a subject, instinctively turn toward the Mormons. One more attempt to solve the much vexed question of judicial jurisdiction is to be made in Congress; and Senator Frelinghuysen's expedient is, with other plans, to be considered to-day by the Senate Judiciary Committee. Whatever else happens to the Mormons, they will not perish for lack of attention.

If it were not for the conflict of Mormonism, *per se*, with the general spirit of the laws and institutions of the country, we should never hear of the difficulties which are felt in reconciling United States and Territorial laws. Just now the chief trouble is over the jurisdiction of the Territorial Courts. The main question was raised in the well-known Engelbrecht case in this form: Have the Probate Courts in Utah jurisdiction in criminal cases? It was answered in the affirmative by the United States Supreme Court, Chief-Justice Chase giving the unanimous judgment of the bench. Such an issue would not be raised in any Territory but Utah; but the Administration, with a happy faculty for taking hold of questions by the wrong end, would not at first discuss the legal view of the case at all, but instructed its officers to elude it altogether and proceed as though no such question could be mooted. Justice McKean decided that the United States Court had original jurisdiction in common law criminal cases, and that the Territorial enactments touching such matters were substantially null. Met by the decision of Chief-Justice Chase, this curiously arbitrary assumption fell to the ground. Now, Mr. Justice Hawley, sitting in the U. S. Court in Utah, has, in effect, reaffirmed the McKean decision, which was overruled by the United States Supreme Court, last Winter. He holds the Legislative enactment to be void. We shall never bring order out of chaos in Utah at this rate; this is simply judicial anarchy; and this is what Congress is called on to cure.

It is, in truth, a hard nut to crack. According to Chief Justice Chase, the Territorial Governments are organized upon the theory of leaving to the inhabitants all the powers of self-government consistent with the supremacy of national authority and certain fundamental principles established by Congress. The Chief Justice also said, in the Engelbrecht case: "In all the Territories full power was given over all ordinary subjects of legislation. The terms in which it was granted were various, but the import was the same in all." Furthermore, he said, speaking of the Territorial Courts: "Congress makes no attempt to confer criminal jurisdiction on any Court; but leaves all criminal matters, including the mode of drawing jurors, to the Territorial Legislature." Under such a construction of law, therefore, the Utah Legislature organized in 1855, probate courts on which were conferred original jurisdiction, both criminal and civil, as well in chancery as at common law, when not prohibited by legislative enactment. Congress never disapproved that act of the legislature; of course it must stand as law until it is so disapproved, especially as the United States supreme court has expressly reaffirmed (in the Engelbrecht decision) the principle that a Territorial Legislature has control over this as one of the ordinary subjects of legislation. The probate court law was enacted in 1855, and the jury law in 1859; a simple disapproval of Congress would have annulled them. They never were so disapproved; the reasonable inference is that they were approved by that body.

We do not discuss now the expediency of permitting the Legislature of Utah to erect courts which shall have original jurisdiction in criminal common law. But there is nothing in the Organic Act prohibiting the Legislature from exercising that right; everything points, as Chief Justice Chase indicates, to the theory that the Territorial Legislature is clothed with full power over all ordinary subjects of legislation, of which this is one. At any rate, the Utah Legislature exercised that power seventeen years ago; and Congress has never disallowed it. Yet, such being the law (Probate Courts being given criminal jurisdiction), U. S. Justice Hawley decides that "the Act of January 17, 1855, is null and void because contrary to the Organic Act." It is Justice McKean over again. The Organic act says the Probate and other courts shall have such jurisdiction as "shall be limited by law." That limit was not fixed by Congress in the Organic Act, nor by any subsequent enactment; this duty was left to the Territorial Legislature, as one of "the ordinary subjects of legislation;" and it has been so regulated. The United States Courts have no common law jurisdiction in criminal cases, says Kent. Mr. Justice Hawley says the Territorial courts have not; therefore, there is none in Utah. This is simply anarchy. The United States Supreme Court will overrule such a violent decision as this, if it ever reaches it. Meantime, let us see if Congress cannot reduce the judicial dislocation.—*New York Tribune, Feb. 8.*

Won't Let Utah Govern Herself.

There seems to be a division of opinion among the Utah lawyers as to the justice of the legislative acts relating to territorial courts. One protest from certain members of the bar is made up of grave indictments against the legislature, chiefly relating to the establishment of small local courts of considerably wide original jurisdiction. Now we have a protest against that protest—also from lawyers in Utah. The truth of the case is that the local laws of Utah are pretty much the same as those of other Territories, but it does not seem to be safe to let Utah govern itself as Wyoming or Montana may be governed.—*N. Y. Tribune.*

Frelinghuysen's Bill.

WASHINGTON, Feb. 6.

Senator Frelinghuysen introduced a bill, to-day, which was taken to the printer with such haste as to lead to the belief that it was not intended for the public. The bill relates to the Mormon question, which the President and Dr. Newman seem determined to have settled this winter, if their exertions are of any avail. The bill provides for regulating the judiciary on the principle adopted by Judge McKean but reversed by the Supreme Court, with regard to juries. It also provides for preventing polygamous marriages in future, but does not propose to interfere with those already existing. The Senate Judiciary committee will hold a session on Saturday, for the special consideration of the Utah question in accordance with the President's request.—*New York Tribune.*