and in our country they were the result of the favor of the people. Mr. Williams gave a note and, like many other gentlemen, he did not pay it. They sued him, and the case was decided in 1831 in the court for the correction of errors in New York. The first question considered was, Had the Territorial legislature the power to exercise this sovereignty and grant an act of incorporation. Chancellor Walworth doubted that; he was an old-fashioned man. "But this charter had been granted fourteen years before, and Congress had never annulled it." I will show you directly how the right of eminent domain was exercised by that Territorial legislature, and how the right of escheat has been recognized in that State. Under the common law of England it belonged to the King. Here is Chancellor Walworth's dissenting opinion, as published in 7th Wendell's reports:

William vs. Bank of Michigan, Page 546. "Chancellor Walworth says, notwithstanding these serious objections to the validity "of this act [of incorporation by the Territorial Legislature of Michigan of this "Bank] we cannot shut our eyes upon the "fact that it has been in operation within "the Territory of Michigan fourteen years "without having been *annulled* or *disapproved, or disapproved by Congress*, although "they [Congress] previously abrogated an "Act incorporating the Bank of Detroit at "a much earlier day.

"As a Territorial Government now about "to be established it is a fair inference that "Congress intended to confer necessary legislative power on the Governor and "Judges, subject to the limitation and restriction that the laws to be adopted [should "be taken from the laws of the original "states, *and subject to the approval or disapproval of Congress.*" With this qualification "it seems to the court that the [Territorial] "Legislature were clothed with *general "powers of legislation*, and the great variety "of laws of a general nature passed and "adopted, which are set out in the case, go "to fortify this construction. The [Territorial] Legislative authority thus created by "Congress have decided that a bank is "necessary and suited to the circumstances of the district and if the power is *conceded* "the EXPEDIENCY of the measure is not "to be called in question by the JUDICIAL "TRIBUNALS of the country. In 1806 the "Governor and Judges incorporated the "Bank of Detroit and the next year Congress *disapproved of it*, and passed a "law repealing *that* law of the Territory. "Congress has not in the present instance, "as in 1807, passed a law repealing the "*present* charter. The Bank of Michi"gan has been in operation for several "years and has been permitted to go on "without interruption. This affords satisfactory evidence that the government of "the United States *does not* disaprove of "the charter, much less that it denies the "authority of the Governor and Judges, "[Territorial legislature] to pass such a "law."

This decision, given in 1831, is one with which no intelligent lawyer will disagree. It declares that a Territorial legislature did possess the power of self-government, and affords satisfactory evidence that the government of the United States did not *disapprove of the bank charter*, much less that it denied the power of the Territorial government which granted it.

Now, your honor, here is an act which has stood on the Statute Book of Utah since 1855. It has been in operation nearly twenty years; it has been permitted by Congress to go on without interruption. This affords satisfactory evidence that the government of the United States does not disapprove it. Why, your honor, in law as in love, in everything, *silence gives consent.* If a man offers his hand, and his purse, if he has one, to a woman, and she shuts her lips, what does she mean? Why, consent. These acts have all gone to Congress, and Congress has taken no notice of them, therefore Congress has affirmed them. Let me refer back, just one word, to Judge Campbell's decision in the Michigan reports, hitherto cited. He says—"But until revoked, &c." "Until "these statutes of Utah Territory "have been revoked by Congress "every one of them is just as obli"gatory as the acts of Congress and "for the same reason." *Qui facit per alium facit per se.*

Admitting that Congress is our master and that we cannot unfurl a flag, beat a drum, blow the shrill fife, that we can't celebrate the 4th of July, can't wear arms, which the Constitution gurantees, and every man, no matter whether "Mormon," "Gentile," Jew or devil, is forbidden to do these things in Utah Territory; take these gentlemen on their own ground — Federal ground — and if Congress possesses the power to annul these acts and does not exercise it, why, in the name of all that is sacred and holy, do not they consent to it? I repeat again, and with a perfect conviction that this court will sustain me, that the statutes of Utah, about which so much has been said, are the statutes of Congress, made by the SILENT ASSENT of Congress, which is precisely as binding upon the whole people of the country as would be an affirmative declaration by them.

Now, your honor, let us see if the Supreme Court of the United States in the Engelbrecht case has decided this case. That decision says that every provision of that statute which has not been repealed by Congress is affirmed by Congress. That is the case with all the laws. I am not standing upon this mere case to-day. That statute, charge what you will with it, is a law of the Congress of the United States; and when you go with your messages to Congress and tell them that the Gentiles in this Territory are deprived of their rights, tell at the same time that they, Congress, are the men who did it. They are the men, *ecce homo.* I stand upon the law. Listen to Judge Chase—a man now gone to heaven, where very few modern politicians are likely to go, according to my recollection of them. What does he say, your honor?

In the first place, we observe that the law has received the implied sanction of Congress. It was adopted in 1859. It has been upon the statute book for more than twelve years. It must have been transmitted to Congress soon after it was enacted, for it was the duty of the secretary of the Territory to transmit to that body copies of all laws on or before the first of the next December in each year. The simple disapproval by Congress at any time would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body.

This is Judge Chase talking to your honor, the Chief Justice of the Supreme Court of the United States, who has burst the cerement of the grave and put on his ermine, which was never stained by fraud or villany. I repeat, he says: "Their simple disapproval would "have disannulled it at any time; "if it is not disapproved it is a rea"sonable inference that it was ap"proved by that body."

Your honor will pardon me if I refer for a second to your printed opinion, in order that I may answer the very question put here about the power of the government. The statute, your honor, as I have said, over and over again, does not contain a word, a letter, not a dot of an *i* or the cross of a *t* which shows that they intended to legislate on the subject of the CRIMINAL JURISDICTION of the courts at all, unless you get it at common law; but there is no common law of the United States. (Read 168—173. American Common Law, 1 Kent, page 367.) But Congress leaves in our organic act all matters about crime or offences against the local laws to the local legislature, together with the mode of drawing juries. Now, therefore, your honor, I come to the conclusion that probate courts do have criminal jurisdiction over all crimes against the Territorial laws. First, by reason of the inherent power in the Territorial legislature to make their local laws, with the aid of the governor; and second, because of the tacit consent—the actual approval, by Congress, of the Territorial law of Jan. 9th, 1855.

I will read another decision to your honor, from Walker's Chancery Reports, page 88, given by Chancellor Farnsworth. This was a question as to whether the legislature of a Territory had power to grant a corporation for a railroad. The chancellor says, "The question was whether the local legislature had power to grant a corporation, because that was part of the sovereign power." He cites the law and shows they had and then says: "As Congress has never dis"approved the act of incorporation "of the Detroit and Pontiac Rail"road Company, it has thereby "ratified and approved it." Therefore if it, Congress, has not "disapproved the act it has approved it."

In the case cited from 2nd Michigan, page 430, Gibbs Report, Swan against Williams, the question was whether the power of eminent domain existed in the Territory, and these judges, six in number, all of whom had served in the harness in the territory of Michigan, delivered the opinion already cited. Judge Campbell says, under this ordinance (the same as we have in this territory), "The only difference between us and a State is that we hold derivative instead of independent functions."

Now let us look at the decision of the court of errors in New York, delivered in 1831 by John Savage, Jacob Sutherland, and Samuel Nelson, concurred in by Senator Seward and the Senate.

SWAN *vs.* WILLIAMS.

We do not propose to enter upon an extended examination of the operation and objects of this ordinance, and of the powers conferred by it upon the Legislatures of the Territories, created under its provisions. It is and ever has been regarded as the Organic Law, or constitution of such Territories—declaring and guaranteeing the rights of the citizens—and providing for the formation and organization of Territorial governments, and delegating to such governments full powers of *local legislation*, after the acquisition of a sufficient population, to authorize the organization of legislative assemblies. It must not be understood that no restraints were, in our view, imposed upon the legislatures; but that such were rather in the nature of *constitutional* restraints, than of a reservation of power in general government perfectly consistent with every exercise of *sovereignty* compatible with republican institutions, and such as the people, in the erection of every State in this Union, have imposed upon legislative authority.

Among the powers incident to all governments, and necessary to their efficiency and preservation, are those of organizing towns and counties, constructing roads and bridges, and other highways, and assessing and collecting taxes; and it cannot be contended for a moment, that the silence of the ordinance in any of these particulars, would argue a want of power in the Territorial Legislature, to exercise them as public good or necessities might require.

Effective Territorial governments were as fully in view of the framers of the ordinance, as effective State governments which were to succeed them; and the restraints imposed upon the Territorial Legislatures, were upon their form and constitution, rather than upon their general powers and jurisdiction. The authority to make laws for the good government of the Territory, not repugnant to the principles and articles of the Ordinance, was expressly delegated. The term "good government," embraces within its scope the whole range of legislation necessary to secure the comfort, prosperity, and happiness of a people; and the authority could not be exercised, except as the usual attributes of sovereignty were lodged in the Territorial governments.

And lastly, because in Utah, not as in Colorado, Nevada, Dacota and Wyoming, our organic act contains *no provision whatever as to the criminal jurisdiction* over offences against the Territorial laws. Now, your honor, in conclusion I will say, this is a matter for the consideration of this court. Your honor has just come among us, and we all welcome you. Your honor is not bound by *stare decisis.* I ask your honor to look, in connection with the argument, at the peculiar conditions and influences, of which this is one link in a most extraordinary chain such as our country never saw before. For the last two years there has been no grand jury legally empanelled in the District Courts of this Territory. Crime is rampant on these streets —murders, robberies and larcenies. This man is charged with robbery outside the theatre—a highway robbery in these streets. He was arrested and has been tried. Not by the district court, because it saw fit to have no grand jury. He did not even plead to the jurisdiction of the court; he has gone in there with all his infamies on his head, has submitted himself to the jurisdiction of that court; was tried by a jury that he did not challenge; was tried upon evidence that convicted him, of one of the highest crimes known to our law; and now, your honor, look at this humiliating spectacle —a federal judge, receiving his appointment from the President of the United States, his compensation from the Treasury of the United States. *Not a United States Judge, for Judge Chase* told these editors what they never seem to remember—that there is no such thing as a *United States court in a Territory.* Your honor is nothing more nor less than a Territorial judge. The record that went to Washington in the Engelbrecht case was the laughing stock even of the old negro who sat at the door because it came from "*The Supreme Court of the United States in the Territory of Utah.*" There is but one such court, thank heaven for that—that is a court created by the Constitution of the United States. Your honor holds a responsible commission in Utah. I would not lessen it. If I had the power I would double and treble your salary tomorrow, and place you beyond the reach of temptation in this wicked country. This man is brought here on a writ of *habeas corpus*, with crime and infamy proven upon him. And a judge of the United States is asked to put him on the streets, that he may do just as one of his confederates did who was discharged by Judge Hawley—turn round and shoot one of our citizens. We have had no grand juries, and can not get one, and anarchy exists in consequence thereof. If I were wicked enough I could shoot this man down, I could bid defiance to the law to prosecute me, because the district courts have no power, and when the probate courts exercise it the district judges walk to the penitentiary, unlock the door and set the criminals free before their sentences are half out, and send them back into the community.

Your honor, I have done. I feel deeply. I think I understand the law. I ask the Court to take no decision from any of its predecessors. I aver that there is no record of the supreme court of this Territory to-day, if there is, let that young man who has charge of it produce it, of any decision by that court. If you find one except the one which has gone to the Supreme Court of the United States, then I give up. There is a case now pending there in which this whole question is discussed. If you do not send this man back to his cell, I ask you as a citizen, and on my oath of office as a lawyer, to go into an investigation of his crimes, and instead of sending him back on these streets to-night to renew his work of infamy, hold him for the action of the next grand jury if you find he has committed any crime.

I close with this quotation from the Supreme Court of the United States—

As there is no provision relating to criminal jurisdiction of Territorial Courts in the Constitution, or the organic act, it can not be said that any legislation upon this subject is consistent with either. The method of procuring jurors for the trial of cases is therefore a rightful subject of legislation, and the whole matter of selecting, impanneling and summoning jurors is left to the Territorial legislature.