argument, and the court adjourned until half-past 1 o'clock.

1.30 p.m.

Court met again at this hour.

Mr. Brown then opened the argument on behalf of the plaintiffs. He commenced by stating that if he understood the argument of the counsel for the respondent he had made four points of demurrer, specifying and arguing them in detail. Since coming in, however, Mr. Van Zile desired to add a fifth, if not already included, viz.: that there is an adequate remedy and that therefore the writ should be denied. That alleged adequate remedy he understood was to be had by an application to the House of Representatives, or by *quo warranto*. He would proceed to discuss those five propositions in their order. It was simply a question of law that was under consideration of the Court, it was independent of any political question, and he wished to answer it merely as a legal point. The first point in the demurrer was that the plaintiffs had not sufficiently alleged that Arthur L. Thomas is Acting-Governor of Utah, and on this point Judge Sutherland had read from the writ to show that it was alleged that Eli H. Murray was the Governor on and before Jan. 8, 1881, and that on that day he left the Territory. It seemed to him that the bare statement of this question furnished its own answer. It was never necessary to allege the actual continuance of an office. The law presumed, within all reasonable time, that when an office was once filled, that that condition of affairs continued. If they alleged that Eli H. Murray was Governor on the 8th of January, 1881, as they did allege, then Thomas on the Governor's departure, became Acting Governor on the 8th, and it was quite unnecessary for them to say that he continued to be acting Governor on the 9th. The other side had contended that the plaintiffs had alleged that Murray is the rightful Governor, and that therefore the Acting Governor was not the real man. Mr. Brown did not know any rule to establish such an argument. It was sufficient, he contended, to allege that Thomas held the office *de facto*. If he was acting in the place of Murray, that was sufficient. The other side had asked the court to take judicial notice who was Governor. Mr. Brown hoped the Court would take judicial notice of that fact. The next point was that the plaintiffs had improperly brought this writ, inasmuch as it was in the name of the people of Utah instead of in the name of George Q. Cannon, and that therefore the demurrer must be sustained. Mr. Brown certainly quarreled with the conclusion the other side had come to under this head, that it was necessary to make out the writ in the name of George Q. Cannon instead of in the name of the people. But how far did this proposition go? He begged to call his honors attention to the writ itself. There was no statute, no rule or principle in this Territory, or any other that he knew of, that specifically required that this writ should be entitled at all. If entitled it did no injury to it.

This writ, Mr. Brown argued, must run in the name of The People of the Territory of Utah. It had been so made out. It commanded the performance of a certain duty—not exactly in the same terms, in the same manner as if it had been made out in the name of George Q. Cannon; there was merely a difference in the phraseology, the offence asked to be remedied remained the same. Mr. Brown went on to conten that the people were largely interested in this case. Mr. Cannon undoubtedly had an interest also, but inasmuch of 18,500 people out of 20,000 had voted for Mr. Cannon, the people, it must be admitted, were also very largely interested in this application. The people had a perfect right to make such an application. Any one of the people had the right to make this application, not certainly in their own name, but in behalf of The People of this Territory, to compel the Governor to grant the certificate to the person who was entitled to it. The rights of the people were sacred. The courts recognized these rights. The People were, therefore, entitled to enforce, by the right of mandamus, the performance of this certain duty which the Governor must perform. All proceedings in cases of this kind were not always made out on behalf of the candidate, but quite as frequently in behalf of the people at large. Mr. Brown quoted law bearing out this assertion, and went on to show that the wrong in this case to the people was vastly more than to Mr. Cannon, and therefore the people, 18,500 of them, had a perfect right to lay this writ. The next point taken up by the opposing counsel was that the duty required of tne Governor was a discretionary and not a judicial one. Mr. Brown claimed that the people had a right, wherever there was a ministerial duty imposed upon any officer, to command the performance of a particular duty, and held that a person who had power to make returns in an election acted in a ministerial and not in a discretionary sense. On this proposition Mr. Brown quoted a large number of cases in support of his argument, and went on to take up the fourth proposition, that this returning board consisted of the Governor of the Territory; that therefore the court had no jurisdictisn over him or to compel him to do any duty; that, in fact, the Governor was king, and although he might take away the rights of the people, yet, according to the argument of the opposite side, the court must not touch the king. Mr. Brown contenedd that the court had jurisdiction; that wherever a Governor of a Territory, at least—in fact the Governor of a State—had a mere ministerial duty to perform he might be compelled to perform that duty by mandamus. He laid that down as a general proposition. That was the law of California when the code was adopted by Utah. Why was that code adopted? Simply because the code had been decided and passed upon in every phase and stage.

Lack of space prevents our giving more of the speeches to-day. Judge Van Zile followed Mr. Brown, and the Court, as Tuesday is a national holiday, reserved its ruling on the demurrer until Wednesday morning.

LOCAL AND OTHER MATTERS.

FROM MONDAY'S DAILY, FEB. 21.

Accidentally Shot.—The *Sentinel* states that Alonzo Huntsman, son of G. Huntsman, going from Fillmore to Frisco, in company with the County Sheriff Chas. McBride and W. Dame, when near Twin Peak Spring, about forty-five miles northeast of Milford, at about five o'clock last Tuesday evening, met with a painful accident. He was attempting to replace his shotgun in its scabard when it slipped from his grasp, and striking the wagon bed exploded, knocking him senseless and tearing off the thumb of his left hand. The contents passing through his hat brim scorched his eyebrows and blackened his shirt bosom, but did no further damage.

Fatal Poisoning.—A lady named Blizzard, a resident of the 14th Ward, and sister-in-law to Mr. S.H. Hill, at whose home she was living, committed suicide by taking poison Saturday evening. As soon as it was ascertained what she had done, a physician was summoned, but all efforts to restore her proved unavailing. She died about half-past 7 o'clock. The coroner's verdict was that she took poison during a fit of temporary insanity. The deceased is said to have been very low spirited for some time previous to her death, and that her despondency occasioned by her husband's decease, deepened into insanity, during which she put an end to her sufferings as stated.

Hopt Found Guilty.—At the conclusion of Judge Van Zile's eloquent and argumentative address to the jury in the Hopt murder case, Saturday evening, Judge Emerson charged the jury and they retired to consider upon a verdict. They were gone about an hour and 15 minutes, and came back with a verdict of "guilty of murder in the first degree." The prisoner betrayed but little emotion, it being evident as stated in a former issue of the NEWS, that he expected such a result. He was remanded to the Marshal, passed the night in the city jail and was then taken to the Penitentiary where he will remain until the day of sentence—March 12th. His attorneys, in the meantime, will file a bill of exceptions, and move for a new trial, which motion, of course will be argued and disposed of before sentence is pronounced.

Elliott F. Shepherd will be nominated for United States district attorney of the southern district of New York.

THE HOPT MURDER CASE.

WEDNESDAY, Feb. 16, 1881.

Third District Court, Judge P. H. Emerson on the Bench.

The Court met this morning at 10 o'clock, and this being the day set for the trial of Fred. Hopt, (*alias* Welcome) on the charge of having murdered, on or about the 31st of July, 1880, one John F. Turner, the court room was filled with spectators anxious to hear the proceedings.

Shortly after 10 o'clock, Hopt arrived in court in charge of an officer, and was accommodated with a chair by the side of his attorneys, Messrs. Lee J. Sharp and John A. Marshall. Hopt looked quite unconcerned as he took his seat at the table; in fact he doffed his overcoat and sat down as if he was going to defend somebody instead of being defended upon such a serious charge.

Owing to the non-arrival of a number of witnesses for the defence, considerable delay took place in the hope that the witnesses might turn up. After waiting some three-quarters of an hour, however, with no immediate prospect of the witnesses appearing—or at least a sufficient number of them to warrant the case being proceeded with—

Mr. Sharp said he was afraid he would, under the circumstances, have to apply to the Court for a continuance of the case until the afternoon. Some very important witnesses in the case had not yet arrived, and in addition to that, the counsel in this (the defendant's) case had had great difficulty in placing themselves in communication with the witnesses and in otherwise becoming thoroughly acquainted with the facts. Under these circumstances it would be, it appeared to him, committing judicial murder to put Hopt on trial. The counsel had been laboring under great disadvantages. Hopt was imprisoned in the Penitentiary; and altogether they had not been able to prepare the case as they could have wished.

Judge Emerson.—There is nothing remarkable in a person indicted on such a charge as this, being confined. It is necessary that they should be confined.

Mr. Sharp.—I understand that, your Honor, but at the same time counsel at least should have time to make some preparations for the defence.

Judge Emerson.—When were you appointed?

Mr. Sharp.—We were appointed on the 24th of January, and since that time we have been trying to place ourselves in communication with these witnesses.

Judge Emerson.—What time do you want?

Mr. Sharp.—Well, it will take some little time, but we will draw it up as soon as we can.

Judge Emerson.—We do not want to lose any time. We will therefore adjourn until one o'clock.

The court therefore adjourned until that time.

AFTERNOON.

The court again met at one o'clock when Mr. Marshall presented an affidavit made by Hopt, praying for a continuance of the case on the ground that several important witnesses, which he considered necessary should be present, had not yet been found.

Mr. Marshall also presented an attorney's affidavit, setting forth that they had not had time to prepare the case for the defence, and prayed that the case might be continued until the next term of the court.

Judge Van Zile said he did not see anything in either of these affidavits to warrant the case being continued. The affidavit was the same—or nearly so—as that presented before the court sometime ago for a continuance of the case. The defense seemed to be proof of intoxication on the part of the prisoner; that was not a defense. This same motion had been argued and overruled by his Honor, and the case was set for trial to-day, witnesses were present, and a jury was upon the eve of being drawn. He did not see that there was anything in the affidavits to warrant the case being continued.

Mr. Sharp did not know that it was necessary to make any remarks at all in support of the motion. They did not pretend to say that drunkenness was an excuse in the eyes of the law, bnt still where the intent must be coupled with the act, it was important for the jury to have all the facts before them. Again, in the language of the law, it would amount to a denial of justice that counsel should not be prepared or have an opportunity of being prepared for the defence. As stated in the affidavit, they were only appointed on the defence of the prisoner on the 24th of January. Since that time they have been trying to place themselves in communication with the witnesses. The prisoner claimed to be an innocent man, and while counsel was willing to recognize all the rights of the prosecution, still they must insist that the prisoner had some rights which the court was bound to take into consideration.

Judge Emerson said he could see nothing in either of the affidavits to warrant a continuance of the case. The case must therefore proceed.

The jury then took their seats and were examined by Mr. Sharp as to their bias. Several jurors were challenged, and the challenges sustained. The examination of the jury was still proceeding when went to press.

THURSDAY, Feb. 17, 1881.

The empannelling of the jury was immediately proceeded with.

Messrs. Van Zile and Beatie appeared on behalf of the people; Messrs. Sharp and Marshall on behalf of the defendant.

Ultimately, after a number of challenges on both sides, the empannelling of the jury was completed as follows:

N Desenberg, Wm. Schade, Chas. W. Mann, George Marriott, Edward T. Ashton, F. G. S. Lynberg, Wm. A. Pitts, J. H. Nounan, Wm. P. Jack, Miner G. Atwood, Fred. Bolwinkel, Thos. Goodman.

The jury were then sworn, and a recess taken until two o'clock.

AFTERNOON SITTING.

2 o'clock.

On the re-assembling of the Court at this hour, the jury having answered to their names, the clerk of the Court read the indictment against Hopt, which appeared in our issue of last evening, to which the prisoner plead "not guilty."

Judge Van Zile then proceeded to state the case for the prosecution to the jury. The case, he said, they were called upon to try, of course they understood to be an important one, and at this time, at the outset of the trial it seemed to him necessary that somewhat of a full statement should be made to them of what the prosecution expected to prove, and that they might see the application of the proofs. The Judge then proceeded to call the attention of the jury to the statute which applied to the case, and said that under that statute they expected to bring forth evidence which they should insist would prove conclusively that the defendant was guilty of this charge. Mr. Van Zile then related at length the circumstances of the murder, and laid down the theory of the prosecution as to how the murder was committed.

Testimony was then called.

John W. Turner was the first witness, who in answer to questions put by Mr. Van Zile said: I reside in Provo City. I did not hear the statement you made to the jury. I can give you a general description of this young man (his murdered son) in his life-time, just prior to the alleged killing. He was about five feet six and a half or seven inches in height. He was not quite as tall as myself. He was of rather dark complexion. Just before leaving for Park City he had his hair cut short. He was dressed in a pair of lightish pants, cheviot shirt, vest, and coat. He had on a pair of shoes. He had on a broad-rimmed summer hat. He had a silver ring on his left finger, that he had worn for three years. (The ring was produced.) He went away to do teaming in the mining camps. He took with him four horses and two wagons. He left home on the afternoon of the 28th of June. Witness then described in detail the wagons, color of the horses, etc., and then continued: After I heard the report that my son's body had been found, I started for Echo, on the evening of the 19th of July. I arrived at Piedmont a little after daylight; I began my search. About noon of that day I went down to where some men were hauling timber, to see if I could identify the wagon which had arrived there. It was the wagon which belonged to my son. I also found the trial tongue in a blacksmith shop. I also found a bell which my son had used on his horses. This is about all I found at that time. I then went on further east. I went to Green River that evening, where I found the new wagon. It was the new wagon belonging to the deceased. I knew the wagon in various ways. My name was on it; I also knew it by the way the tongue was fixed. I found on that wagon the marking of my own name. I also found, on a subsequent trip, a couple of quilts and a pillow. I did not find any grain sacks there. These were sent me from Evanston with my brand on. At Green River I did not see the other team on that trip. The quilts and pillow I identified as belonging to my son. I believe it to be the pillow. The pillow case had been taken off. It was very bloody. I went on from there. I know the defendant. I have known him over a year. I have had him in my charge. He lived about my place. He worked for me.

This trial is now fairly under way. At noon, yesterday, the empanelling of the jury was completed, and in the afternoon, as may be seen from the NEWS of last evening, the prosecution proceeded with the examination of witnesses. The court-room continues to be densely crowded by the public, and at mid-day, when the court rises for recess, and in the evening, when the court adjourns, the greatest curiosity is manifested on the part of the crowd to catch a glimpse of the accused, as he is conveyed from the court-room to the penitentiary wagon. The prisoner, who is seated at the left of his attorneys, pays the closest attention to every question that is asked and to every response that is given. He occasionally relieves the monotony of things by indulging in a chew of tobacco, but is never noticed to turn round to look at the spectators. The prisoner cannot now, as at first, be said to display an air of indifference; on the contrary, now that the trial has fairly commenced, he seems to feel acutely the position in which he is placed. His attorneys, Messrs. Lee J. Sharp and John A. Marshall, watch the case very closely on his behalf; while the prosecuting attorneys, Messrs. Van Zile and Beattie, lose no point in presenting their side of the question.

When we went to press yesterday evening, the examination of Mr. John W. Turner, the father of the murdered boy, was in progress. He was affected to tears once or twice during the examination, more especially when asked to give a description of his son when he left home on the 28th of June last. Part of Mr. Turner's evidence we published last evening; we now give the remainder, as also the evidence of other witnesses who were examined up to the adjournment of the court last evening at half-past 5 o'clock.

Mr. John W. Turner continued: When I arrived at Cheyenne, I met Mr. T. J. Carr, detective. Within five minutes after my arrival I saw a man looking into the car windows. That man was Welcome. He was arrested by Mr. Carr. There was nothing said then about my son. I had no talk with the accused on the subject. I came back on the same train with Welcome. I afterwards made another trip to Green River. I omitted to mention that I found a satchel in Dyer's Hotel on my first visit to Cheyenne, and a pair of pants. I could not swear to the pants. In the satchel I found two pocket knives and a ring belonging to my son. Between the 8th and 12th of August, in Park City, I picked up a sock. I found it about 40 rods above the McHenry Mill, and within four rods of the main road from Park City to Heber city. I know the general appearance of a camping ground I found it near to such a place—about 13 feet from a pile of straw, and probably about 20 feet from where there had been a fire. I also found a calico sack, and a spreader, which I recognized as the property of the deceased. (Document was shown to witness, which he said he had received from a Mr. Moss. Contents of the document were not stated.

Cross-examination by Mr. Sharp: I saw the defendant in Salt Lake City on the 12th and 13th of June last. I had some conversation with him on both dates, I told him that I had purchased a wagon for my son. I do not recollect saying anything to him about getting work in Park City. It was on the 13th that prisoner and I rode out to the penitentiary. I may then have spoken about employment for the teams, but I do not recollect it.

Thomas Fowler sworn said: I knew the deceased. I know the property that it is alleged he took away when he left home. I last saw the deceased alive in May. I saw him dead in Echo Canyon on the 21st of July. I found the body lying on the upper side of a large rock, close to the main road.

Continued on Page 60.