that it asked what legal successors might be appointed because it became apparent from the delay of the Commission that they could not be elected. If this Act of Congress had said that the Governor should appoint the successors, it was very clear there would be no ground for a contest; but as it happened the law gave no such power to any one man. Mr. Marshall had alluded to Congress in terms unusually dignified, such as, "grave and reverend senators," whom, his friend would have this Court believe, could do no wrong. Now, (said the Colonel) any body, your honor, that knows as much about these "grave and reverend senators," as you and I, knows very well that there is more poetry than prose in that kind of talk. Why, sir, your experience and mine has taught us that these "grave and reverend senators" are in one respect like these mountains before us—distance lends enchantment to the view; you look at these grave fellows from a great distance, imagining them to be garbed in the toga of greatness, and they certainly appear to be big men; but when you get close to them, they, your honor, like Marshall and I, are "small potatoes." Counsel then went on to show that the few senators that figured at the bottom of the amendment in question, exposed their utter ignorance, grave and reverend, no doubt, as they might be, with existing statutes governing these cases; and because of consummate ignorance on the part of these grave and reverend senators, Mr. Marshall, yes, sir, actually Mr. Marshall, comes into court and, with an air of seriousness, refers your honor to authorities on the rules of construction, in the hope that this court would so far forget itself as to attempt to harmonize the inconsistencies of an amendment to the civil sundries appropriation bill, with the territorial statutes bearing on this case, so as to make an autocracy of a republican Territory. Counsel did not deny these rules of construction in places where they were not applicable; but the rule that was paramount to all those and which could not be set aside to accommodate any others, was, that where the language of a statute was plain and free from ambiguity, there was no room for construction. When the "grave and reverend senators" said, $1,000 is hereby appropriated to pay John Doe for services," there was no need to refer to rules of construction to construe their meaning as it construed itself. And it was, not for the Court to make strained or forced constructions outside or beyond the words of the statute when they were plain. When there was no ambiguity it was not the duty or within the power of the Court to inquire into the intent of the law-making power; to do that would be usurping the functions of the Legislature. The functions of the judicial branch of the government was to explain the statutes when they needed construction, applying the well-known rules when necessary. It was asking the Court to do an extraordinary thing, to inject into a statute a meaning or sense not borne out by the letter or plain meaning of the statute; to accede to this request, the Court would be guilty of judicial legislation, and the conduct of that infamous Chief Justice would be repeated who lived in the time of Charles II., who said that he could override any law of Parliament, by making laws to himself. Referring again to the Hoar amendment authorizing the Governor to fill any vacancy which may occur, counsel said that successors to the Territorial officers would have been elected had it not been for the failure of the commission in getting here in time; under those circumstances, considering the law under which these officers were elected, the most natural thing for a man of common sense to do would be to inquire, if there was any vacancy; if not, then there could be no appointment. The logical sequence of the argument that had caused counsel so much pain to listen to, was, that because certain "grave and reverend senators," wrapped in the American flag, so to speak, made a law, that that law must have a purpose, a meaning, effect; that if it had no effect it became a "vain thing." Wonderful, your honor, perfectly wonderful! These gentlemen must be terribly inspired with the magnitude of the office of these "grave and reverend senators," when they suppose that when these men in toga passed a law to fill vacancies, that there must be vacancies, that they would not have done so if no vacancy existed. Why, sir, there was a law upon the statute books of the United States providing for vacancies occurring through death or resignation, and according to the reasoning of his friend Marshall, some poor fellow must be killed or made to resign in order to creat a vacancy, otherwise the law would be inoperative or a "vain thing." The court had been asked to construe the Edmunds law and the Hoar amendment together, it being part of that act. But Counsel would take issue with the gentleman on this point, holding that it was not amendatory of that act, that that act was complete in itself. The Hoar amendment referred specially to Utah, whilst the Edmunds law was general in its application so far as the United States had exclusive jurisdiction, and therefore the Court could not again concede to the Gentleman's extraordinary request. And then, the object of the Edmunds law was to suppress polygamy, and in order to give effect to its provisions it had provided for the registering of legal voters, excluding from the poles and from office certain persons declared ineligible, not in Utah alone but in all the Territories; and in order to carry out the provisions of the act, did Congress repeal the Territorial statutes? No; the only provision repealed was that prescribing the qualification of voters; the offices vacated were merely those of registration and election; *if it* was the intention to vacate all the offices, as had been argued here, the act would have said so. The Offices declared vacant under the law had already been filled by the proper officers, namely the Commissioners; had Congress intended to vacate the other offices, they would have said elective offices; but from the fact that the law was not aimed at all the people of Utah they, of course, could express no such intention. Counsel would not deny the power of Congress to change the form of government in this or any other Territory, putting it under Commission if that be their pleasure; but from the fact that Congress had not done so, clearly shows that they intended to leave to the people all that had been conferred upon them in the Act of September 9th, 1850, excepting that taken away in the prohibitory clause alluded to. But, gentlemen say, this act would not be operative. It mattered not in the eyes of the Court whether it would be so or not; it was not within the judicial power to create something in order to make an act operative, the argument of the gentlemen to the contrary notwithstanding. Mr. Marshall's argument, in this respect, was to the effect, that every man in Utah was a refractor of the law, illustrating the same as he aptly did by his simile of the Kentucky schoolmaster, who, because one of the boys was guilty who could not be found out, licked the whole school, in order to administer justice to the guilty one. If, therefore, a polygamist held office in violation of the law, the Court was asked to deal also with those who were not in that enviable state of matrimony. Counsel then occupied the attention of the Court on the power to hold over, stating that the authorities were unanimous in the doctrine that where there was no election the officer holds over by reason of the clause, until his successor be elected and qualified. And showed that there having been no election was not the fault of the people; on the contrary, they were willing and anxious to hold the election; if the people had refused to elect new officers there might be some ground to the argument of counsel, and also for the Court to declared vacant. Counsel concluded this branch of his argument by referring to many authorities, and going over some referred to by opposing counsel, in order to show that the law bearing on the "holding over power" quoted by the other side was not applicable to the case at bar.

Counsel then quoted at considerable length from authorities upon the subject of construction of statutes, all of which went to show, he contended, that the intent of Congress was to be drawn from the language of its statutes. If the language was ambiguous and uncertain so that it might be liable to two constitutions, then perhaps courts might be allowed to give an opinion as to what they believed to be the intant of Congress. In this way must the legislation in question be construed and in no other. But in regard to the Hoar amendment there was no ambiguity of language. The intent was to fill vacancies; but the difficulty in this whole case was there were no vacancies to fill, at least the cases of the defendants were not those vacancies; those men were not disqualified, they had not become guilty of any crime, and they were not charged with any crime.

Passing from this barnch of the case, Mr. Merritt next took up the question of the mode to be pursued to obtain a remedy. If the Court should find there are no vacancies, then there was an and to the matter. The certificates of the appointees, adorned though they might be with the Great Serl of the Territory of Utah, were worthless. But if the Court should say there were vacancies, then they contended that plaintiffs had not pursued the proper remedy. It was conceded that the general weight of authorities was overwhelming, that to try a title to office, must be done by writ of *quo warranto*. The gentlemen on the other side had attempted to show that there were certain exceptions to this rule. The cases which had been cited, however, had no direct bearing upon the subject in question; and to show this to be the case the learned counsel referred to and commented upon at great length, the various authorities quoted by the other side with a view to show their inapplicability to the present cases. In most of the cases referred to by the opposite side there were actual vacancies, which was not the fact in the present instance. Mandamus could not lie in this suit; the plaintiffs must seek relief in *quo warranto*, which afforded a plain, speedy and adequate remedy. But the other side maintained that because they had an apparent legal title that therefore they were entitled to relief by mandamus; that *quo warranto* would not be a plain, speedy and adequate remedy. The coolness of such a proposition was only excelled by the cheek of counsel in making it. They said, in effect, "you have rights, no doubt; but this right of mandamus must be granted to us, you must be ousted from office; you must give up all the papers belonging to the office; you must be tossed out upon the cold charity of the world, and if you have any rights, you must bring your writ of *quo warranto* and try it. And why? Because they said they had an apparent legal title, a title which they claimed was sufficient to make mandamus lie in this case; and they supported their claim by numerous authorities. which, counsel maintained, had no bearing upon the case in question.

In conclusion, Mr. Merrett contended that, looking at the statutes of Utah, looking at the acts of Congress, it was not the intention of Congress to vacate any of the offices except those of registration and election officers. Notwithstanding the terrible state of affairs so eloquently alluded to by Mr. Marshall, Congress was mindful of the rights of this despised people, and it only took away certain registration and election officers. When upon that subject, if Congress had intended to declare all the offices vacant, it could have done so in so many words, and there would have been no dispute. In the judge's letter, they simply asked Congress to provide a way whereby legal successors could be appointed. The judges very modestly and very properly did not say to Congress in what manner they should provide for this contingency. This letter of the Judges had been a great deal harped upon. For what purpose? That his honor and his associates might be committed by this act. It was all done with a purpose. They were told in certain quarters that Judges should try these cases without regard to individual rights; that they should try and decide them according to their political leanings. What an extraordinary statement in this country, under a republican government! Amid the blaze of the intelligence of the nineteenth century, men who were Judges upon the bench were asked to decide, not by the proofs or by the evidence that might be laid before them, but by and in accordance with their political predilections! When that should come to be the case, whenever courts arrived at that position, then, said Mr. Merritt, God help the American people. Then would the reclining days of Rome be re-enacted; then would be the beginning of the end, then would this proudest fabric of human institutions commence to crumble, as it ought to crumble, to the dust. To-day the rule may be applied to the citizen of Utah. To-morrow it might be applied to the citizen of New York and Virginia. To-day that rule may be applied to the democrat by the republican, but to-morrow the poison cup may be put to the lips of the very men who sought to put it to the lips of others. But the learned counsel had no fear of that. They had great confidence. If they were beaten in this case, if this extraordinary writ should be awarded, as they believed, against law, it would be awarded conscientiously, and with a full sense of the respontibility resting upon his honor and his associates upon the bench of the Supreme Court of the Territory. On that they rested with abiding faith and confidence, knowing that whatever might be the result of this case, whether this writ be granted or whether it be withheld, that they had been justly dealt with by their honors—so far as their ability would permit them to decide. A great deal had been said outside as to what the Judges were were going to do, that they were going to bounce the Mormons. Counsel did not believe that. They were told in the public prints that in the opinion of some eminent counsel that all their (the defendants) acts were illegal and void, and also that they were laying themselves open to criminal prosecution. In answer to all such talk, Mr. Merritt said they did not scare worth a cent. They believed they had legal rights, and they believed his honor would grant these rights to them, that they would be allowed to assert them, and that they would be allowed to maintain them. They had been threatened with the strong arm of the government — they had been told that the army would be brought to interfere. Well, said Mr. Merritt, if that remedy should be resorted to, it would be more speedy even than mandamus (laughter). Armies were very useful in the time of war. But what a spectacle it would to the people of the United States and to other civilized governments to see the gallant officers and the boys in blue from Camp Douglas marching down here,—headed by a brass band playing "Hail Columbia," or some other soul-inspiring tune,—commanded by the said gallant officers, with, perhaps some of the learned Counsellors acting as aides, wrapped in the American flag, with the cap of liberty in one hand and a metraillense in the other,—what a spectacle it would be to see them attacking the County Court House, and making a charge upon poor old Judge Smith! (Great laughter.)

Mr. Merrett concluded his very able argument by calling his honor's attention to be debate which took place in Congress on the passage of the Hoar Amendment, and said that while his honor was not required to notice such debates in forming his opinion in this case, yet, if he would examine the debates, he would be able to learn what the views were of eminent gentlemen who took an active part in the passage of this legislation.

The court then took the case under advisement.

ORDER OF THE COMMISSIO .

IN RELATION TO MUNICIPAL ELECTIONS.

Ordered, That there shall be appointed three judges of election for each municipal corporation of the Territory of Utah in which municipal elections are to be held, one of whom shall be designated presiding judge; *provided*, That in municipal corporations in which there are more than one election precinct, there shall be appointed three additional judges for each of said precincts.

The presiding judge for each municipal election shall procure from the office of the clerk of the County Court at least thirty days before the day of election a certified copy of the registration lists of the precinct or precincts in which said municipality is located, and on the second Monday thereafter he shall proceed to erase therefrom the names of all persons not entitled from any cause to vote at said election, and add thereto the names which do not appear on said lists of all persons who are entitled to vote. The revision of the registration lists herein authorized shall be made in accordance with the requirements of rule two of the Rules and Regulations adopted for the revision of the registration lists for the election to be held on the Tuesday after the first Monday in November next.

Said Judges are hereby constituted a board of canvassers for said election in their respective municipalities and shall make returns thereof to the Secretary of the Territory who is hereby authorized and directed to issue certificates of election to the persons who appear by said returns to have been elected.

Provided That in municipal corporations having more than one election precinct, the judges of one of said precincts will be designated to receive the canvass from all the others, and make returns thereof to the Secretary of the Territory, who shall issue certificates of election to the persons who appear by said returns to be elected as hereinbefore provided.

BY TELEGRAPH.

PER WESTERN UNION TELEGRAPH LINE.

FOREIGN.

ALEXANDRIA, 13.—The Egyptian Minister has a list of the landed proprietors who were in the rebellion, and their property worth $10,000,000, it is believed will be confiscated.

Cairo, 13.—The examination of Arabi Pasha was continued to-day. It is understood that he ably defended himself, denying *complicity* in the massacres and in the burning of Alexandria. He boldly vindicated his conduct as the leader of the National party. He said that when he reached Cairo after his defeat at Tel El Keber and found the inhabitants unwilling to continue the struggle, he bowed to their will and surrendered.

The Khedive to-day received a deputation of the National Grand Lodge of Freemasons. He thanked the deputation for their visit and said he could not be sufficiently grateful for the assistance rendered him.

General Wolseley has not yet received permission to leave Egypt.

Liverpool, 13.—Lord Northbrook, First Lord of the Admiralty, in replying to a toast, said: There no doubt was a feeling of sympathy among Mohammedans with the Egyptian insurrection, but the Indian Mohammedans know the Queen had made no distinction between her subjects, and that the Government has no desire to annex or govern Egypt. The great Powers are satisfied that England has no object in closing the canal, whether in peace or war.

The Postmaster General also spoke.

LONDON, 14.—One of the principal Egyptian ministers, declares that neither he nor his colleague will remain in Egypt unless Arabi Pasha and other rebel leaders be executed. He had complete confidence that Arabi could be proved to have given strict orders to burn Cairo. The trial of the leaders is fixed for Monday.

Sir Edward Mallet has issued a circular to British consular agents at Egypt requesting them to send him a list of political prisoners in their respective towns and strictly watch them. The Khedive's orders for humane treatment will be carried out.

Cairo, 14.—The trial of Arabi Pasha is fixed for Monday next. Mark Francis Napier will defend Arabi Pasha.

The officer who acted under orders of Suleimat Pasha, revealed to-day what he knew of the burning of Alaxandria, but the tribunal failed to extort evidence criminating the leaders of the rebellion.

Alexandria, 13.—Upwards of 30,000 persons have lodged claims amounting to £600,000 for losses after the bombardment of the city.

Constantinople, 14—Sheikh Obeidullah, Kurdish Chief, with 10,000 men demanded the surrender of the van. Thirty thousand Persians, with Turkish troops and artillery are marching against him, and have been ordered to capture him dead or alive.

Berlin, 14.—The appointment of Count Von Hatzfeldt to the foreign secretaryship has been definitely settled. Herr Von Radowitz, minister at Athens, will succeed him as minister at Constantinople. It is considered by some persons that the appointment of Count Von Hatzfeldt is an indication that he will eventually succeed Prince Bismarck who is known to entertain the highest opinion of him.

CAIRO, 16.—Arabi Pasha persists in declaring that he will defens himself if denied English counsel at his trial.

It is believed in official circles that proof of Arabi Pasha's complicity in the June massacres at Alexandria will not be obtainable. It is claimed that Ninet, the Swiss, can prove that many Bedonins were shot under Arabi's orders for looting.