tions of the territorial statute of 1888, in regard to the incorporation of cities, gave the city council of Ogden City the power to provide by ordinance for the registering and voting in wards. The court held that those sections did not apply to Ogden City. In the petition for a rehearing it is now claimed that the power to pass such an ordinance by the City Council was obtained from the old charter of the city, and from the general election law of the Territory, and not from the Territorial statute of 1888, referred to. Had counsel made this statement to the court when the case was called for argument it would have saved hours of argument; it would have saved much trouble and time to the court, and it would have enabled the counsel to have omitted twenty-eight pages of the plaintiff's brief. It does not appear that the question now sought to be raised was referred to in the lower court. In the oral argument in this court no stress whatever was laid upon it, and according to our recollection no reference to the point was made. In the plaintiff's brief, a document of thirty pages, the point was not noticed until near the close, within two pages of the end. The whole brief, except those two pages, was devoted to the question decided by the court, and that was treated by counsel all the way through the case as the main, if not the only point in it. When a case is presented to the court wholly upon one theory, and every other point is omitted from the argument of counsel, the court is never disposed to notice a reference by the printed brief to some other point. The rule is that if counsel omit to notice a point, the court will likewise omit to notice it. A party must have his case presented as he desires it to be heard. It cannot be presented upon one theory, and when that fails then be presented upon a different theory, and one to which the court's attention was not called. If a party have what he deems an important point, he should present it at the appropriate time. This court will not hear a case by piece-meal, nor consider any point not presented in the argument. The plaintiff in his petition has shown no grounds for a rehearing, and the prayer is therefore denied.

We concur:

SANDFORD, Ch. J.,
JUDD, Justice.

THE TERRITORIAL SCRIP CASES.

In the case of the People ex rel. Lewis P. Kelsey, respondent, vs. George D. Pyper, court commissioner, appellant, Judge Henderson delivered the opinion of the court.

The plaintiff commenced proceedings in the Third District Court for a mandamus against the defendant to obtain payment of $4.50 due from the Territory for fees as a witness on the part of the people in a criminal case. An alternative writ was issued averring that on the 27th day of February, 1888, the clerk of the District Court issued and delivered to J. D. Stevenson a certificate showing that he had served as a witness for the people in a criminal case, and that he was entitled to $4.50. Stevenson assigned the certificate to the plaintiff, who demanded payment from the defendant, which was refused.

The cause came on for trial on December 10th, 1888, and the issues were found by the court in favor of the plaintiff, and a final judgment entered awarding a peremptory writ, with costs. From this judgment the defendant appealed, and raised the question that there is no allegation in the writ that the defendant has funds in his hands with which to make payment, and that the certificate is defective in form, and that therefore no cause of action is alleged. These questions are discussed at great length in the opinion, which says in conclusion: It is a matter of which this court will take judicial knowledge, and it is apparent from past legislation that prior to the acts in question there has never been any provision for paying witnesses and jurors as the services were rendered, but that each legislature has made appropriations to pay the amount of outstanding certificates as ascertained by a committee of the legislature. We think it is apparent from this legislation that the legislature, having provided for the payment of all outstanding obligations of this kind up to January 1, 1888, intended to provide for the payment of all these certificates for which the Territory was liable after that date, and commit their payment to these commissioners who should be located near the several courts and could make proper inquiry concerning them; but services rendered after January 1, 1888, and before the passage of these acts, should be paid according to the law then in force, and that the judgment of the court below in this respect was right. The court below gave judgment against the defendant for costs. This we think was wrong. There was no finding that the defendant was acting in bad faith, and resisting the payment, and it is contrary to section 3693, Compiled Laws of 1888, which is but an affirmation of the common law principle, applicable to officers acting in good faith and for the preservation of a fund in their hands. A judgment should be entered in this court remanding the case to the court below, with instructions to modify the judgment appealed from so as to provide for payment and costs out of the fund in the defendant's hands as commissioner. Neither party should recover costs in this court.

Justices Judd and Boreman concur.

THE BREDEMEYER APPEAL.

In the case of the United States vs. William Bredemeyer, who was tried before Judge Zane in the Third District Court, and convicted of adultery, Judge Sandford delivered the opinion.

After outlining the facts in the case, the decision states that a request by the prisoner's counsel to the court to instruct the jury to acquit on the ground that the testimony of the accomplice was not corroborated, was refused and an exception taken. The refusal was taken on the ground that the Territorial statute relating to the testimony of an accomplice was inapplicable in this case, in which the United States was the plaintiff. It is provided in the penal code of the Territory that conviction cannot be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense. The refusal of the learned judge was therefore error, if this statute be found applicable to a criminal case in which the United States is a party. We are of the opinion that the Territorial enactment just cited is applicable to this case. It has been many times decided that the statutes passed by the Territorial Legislature regulating the trial of offenses against the United States are not invalid. While the Territorial laws may not override any act of Congress covering the subject matter, Territorial laws control. It was also an error to refuse to allow the defendant to show the bad charactor of the girl who testified against him. This evidence would, if received, have necessarily affected her credibility.

The evidence of the defendant's guilt was vague, unsatisfactory and insufficient to sustain the verdict. On account of the errors above referred to, without considering the other points raised on the appeal, we are of the opinion that there should be a new trial. The judgment of the court below is reversed and the case remanded for a new trial.

Justices Judd and Boreman concur.

When the Territorial Supreme Court opened Feb. 21, there was a large attendance of members of the bar and spectators, many of whom were doubtless drawn there to see the outcome of the report of Examiner Harkness on the Zane-Dyer controversy. The Chief Justice and the three associate justices were present, the district court having been adjourned till Saturday.

J. N. Kimball asked an order of court in the case of the McCord & Nave Mercantile Company vs. Glen, in regard to costs. Taken under advisement.

In the suit of Augustus N. Eddy vs. Elwin A. Ireland, Judge Boreman rendered the opinion of the court, sustaining the action of the Third District Court.

Judge Judd gave an oral opinion as the decision of the court in the suit of Matilda Openshaw et al. vs. the Utah & Nevada Railway Company. In this case the jury gave Mrs. Openshaw and her child $5000 damages for the killing of her husband on the railway. The decision of the lower court in refusing a new trial was sustained, Judge Judd remarking that it was doubtful whether or not the verdict should have been for double the amount awarded.

Mr. Williams, as attorney for the railway, asked that the bond be fixed for an appeal to the United States Supreme Court.

Mr. Rawlins, on behalf of Mrs.