

## McKEE'S UTAH SPOILIATION BILL.

Proceedings of the U. S. House of Representatives, March 4, in relation to McKee's Bill to "Aid the Execution of the Laws in Utah."

Mr. McKEE, from the Committee on the Territories, reported back, with amendments and with the recommendation that it do pass, the bill (H. R. No. 2204) concerning the execution of the laws in the Territory of Utah, and for other purposes.

Mr. McKEE. This bill is quite lengthy, and unless it is to be considered now I do not wish to take up time in the morning hour by having the bill read. It has been printed with the exception of a few small amendments, and I would rather that some day should be set for its consideration, so that the whole House may have time to read and consider it, and, if they wish it, time to discuss it. I do not wish to press it now and keep it in the morning hour from day to day. It is an important bill, and might take up the morning hour indefinitely. I ask unanimous consent that it be set for consideration for the third Tuesday in March, at half-past 1 o'clock. There is a proposition prepared by the minority of the committee which has not been presented, but which they wish to bring before the House this morning.

Mr. CROUNSE. In behalf of five members of the committee I wish to present a substitute for this bill.

Mr. McKEE. I ask that this bill may be made a special order for the third Tuesday of this month, at half-past 1 o'clock, and from day to day until disposed of.

Mr. COX. I think it had better be set for a more distant day.

Mr. BUTLER, of Massachusetts. I desire to call the attention of the House for a moment to the fact that, in my judgment, this bill should be committed to the Committee on the Judiciary. It is essentially a judicial question. The title of the bill is "Concerning the execution of the laws in the Territory of Utah, and for other purposes." It proposes to remodel all the courts, all the juries, and the various machinery of the courts in Utah. The subject was first before the Committee on the Judiciary, and we began its consideration. It was afterward taken up by the Committee on the Territories. I understand that committee to be very nearly equally divided upon it, six in the majority and five in the minority. I think that we, in the Committee on the Judiciary, can come to a more unanimous conclusion, one way or the other. I do not wonder that the Committee on the Territories are divided. This is a new matter to them, one entirely beyond their proper cognizance. I hope that the bill will be referred to the Committee on the Judiciary, who already have three bills upon this subject before them, including one of which this was a draught, and which is under consideration by my learned colleague, the gentleman from Vermont, [Mr. Poland.] At the proper time I will make the motion to refer.

Mr. McKEE. I desire to state that as to the question of jurisdiction the Committee on the Territories, under the rules of this House, have almost exclusive jurisdiction of this subject, while the Committee on the Judiciary has only such jurisdiction as may be conferred upon it by a reference of the bill; only that and no more.

Mr. POTTER. This bill is something like one which was before the last Congress, and which was referred to the Committee on the Judiciary. It was discussed during the entire two sessions of that Congress, and the committee finally, after a very mature consideration, arrived at a unanimous conclusion upon the subject. The chairman of the committee, Judge Bingham, was directed to report the bill to the House, but owing to the lateness of the session he had no opportunity to do so. The bill provides for a new system of drawing juries in the Territory of Utah, owing to the particular situation of affairs there, but at the same time it does not establish any precedent for the other Territories. The consideration of the subject has been again resumed by the Committee on the Judiciary of this Congress, and I quite agree with the chairman of that committee, [Mr. Butler, of Massachusetts,] that it is probable we will soon arrive at nearly a unanimous con-

clusion upon the subject. I think if we proceed to consider the report of the Committee on the Territories it will not result in any wise or prudent legislation.

Mr. McKEE. The Committee on the Judiciary have failed to bring forward a bill; they failed in the last Congress. This bill is nothing new; it has been passed heretofore by the House, and I think by the Senate.

Mr. POTTER. We have failed to bring it before the House this session because our committee has not yet been reached on this call, and we failed last session merely because the committee were not called.

Mr. HALE, of Maine. I ask the gentleman from Mississippi [Mr. McKee] in his proposition for assignment to except appropriation bills.

Mr. McKEE. I make that exception.

The SPEAKER. The proposition requires unanimous consent.

Mr. BUTLER, of Massachusetts. I object, and move that the bill be referred to the Committee on the Judiciary.

The SPEAKER. The bill has not yet been read; all this discussion is informal, but the Chair has indulged it because he supposed some arrangement might be agreed to.

Mr. McKEE. I call for the reading of the rule relative to the jurisdiction of the Committee on the Territories.

The Clerk read the rule, as follows:

It shall be the duty of the Committee on the Territories to examine into the legislative, civil and criminal proceedings of the Territories, and to devise and report to the House such means as in their opinion may be necessary to secure the rights and privileges of residents and non-residents.

The SPEAKER. There is no doubt whatever that the Committee on the Territories have perfect authority to report this bill, nor is there any doubt whatever that the House has the right to refer it to another committee; it is merely a question for the majority of the House to determine.

Mr. COX. With the permission of the gentleman who reported this bill [Mr. McKee], I would like to say one word in favor of its reference to the Committee on the Judiciary.

Mr. McKEE. I will withdraw the bill for the present in order to report other bills from our committee, after which I will report this bill; and, if the House will sustain me, I will keep it in the morning hour until disposed of.

Mr. COX. Well, Mr. Speaker, is the motion of the gentleman from Massachusetts now pending or is the bill withdrawn?

Mr. McKEE. It is only withdrawn temporarily, in order that we may report another bill. This bill will come up again before this morning hour is out.

Mr. McKEE, from the Committee on the Territories, reported back the bill (H. R. No. 2204) concerning the execution of laws in the Territory of Utah, and for other purposes.

The Clerk proceeded to read the bill, but was interrupted by

Mr. G. F. HOAR, who said. I desire to make a point of order on this bill. The bill is very long, and perhaps it may save time to make the point now, though I will reserve it until the close of the reading, if the Chair deems that course best.

The SPEAKER. What point does the gentleman make?

Mr. G. F. HOAR. The rule adopted by the House at the present session provides that—

Bills making appropriations of money or property, or requiring such appropriations to be made, shall be first discussed in Committee of the Whole.

Now, this bill provides for a large number of new offices. For instance, in the first section it provides for the appointment of deputy marshals, and in the third section for the appointment of assistant district attorneys. It prescribes the duties of these new officers, and that "the same fees and emoluments as the district attorney would be entitled to for the same service shall be allowed for the services of assistant district attorneys." Then the twenty-third section provides for the appointment of other new officers of the United States, to wit, judges and clerks of election. All these provisions peremptorily require an appropriation of money from the Treasury of the United States.

Mr. McKEE. The bill makes no

appropriation of money and requires no new appropriation. A deputy marshal or an assistant district attorney will draw but the same pay which the marshal or the district attorney would have drawn. The bill creates no new office, but merely assistants; and it makes no appropriation of money.

Mr. G. F. HOAR. There may be ten of these assistant district attorneys trying different causes at different times; and they are all to be paid by fees from the Treasury of the United States; and an appropriation of money must be made to provide for their compensation. It must be manifest that the creation of a dozen new offices must impose additional expense upon the United States. Under this bill the government may be paying from the Treasury ten men when without the bill it would be paying but one man.

Mr. McKEE. To speak more correctly, the United States will be paying for so many prosecutions—no more, no less. If an assistant district attorney, instead of the district attorney himself, attends to a prosecution, the assistant receives the pay instead of the district attorney. The bill requires no new appropriation.

The SPEAKER. Does the bill authorize the appointment of any officer not already authorized by the government of the United States?

Mr. McKEE. It requires the appointment of assistant attorneys.

The SPEAKER. Not now authorized by law?

Mr. POTTER. And assistant marshals.

The SPEAKER. The point which the Chair wants to get at is this: Does the bill create any additional office or officers for which the United States will be responsible and which do not now exist by law?

Mr. BUTLER, of Massachusetts. Eight or ten.

Mr. McKEE. I say they are not new offices.

The SPEAKER. The gentleman from Massachusetts, in making his point of order, directed attention to the twenty-third section, among others. As that section is brief, the Chair will ask the clerk to read it.

The Clerk read as follows:

SEC. 23. That at any general or special election held in the Territory of Utah, the election precincts shall be established and designated at least 30 days before the election. The governor, United States attorney, and Secretary of the Territory shall have power to appoint one judge and one clerk of election for each election precinct in the Territory so established, and to establish such additional precincts as may be necessary to secure to the people a free and fair election, and to appoint the judges and clerks of election at such additional precincts.

Mr. G. F. HOAR. Let me make one suggestion. Will it be germane for me to move a provision especially establishing the salary of these officers?

The SPEAKER. The Chair was coming to that. He will direct the clerk to read the first section of the bill.

Mr. McKEE. Right here I should like to say these are territorial officers, and that the Government does not pay them at all.

The SPEAKER. The Clerk will now read a portion of the first section of the bill.

The Clerk read as follows:

That the United States marshal of Utah Territory may appoint deputies in each of the judicial districts of said Territory; said deputies shall be authorized to enter upon the discharge of their duties upon the approval of such appointments by the judge of the district court of the district in which each is appointed.

The SPEAKER. The Clerk will also read a part of the third section of the bill.

The Clerk read as follows:

SEC. 3. That the United States district attorney of said Territory may also appoint assistants in each of the judicial districts of said Territory; provided that before any such assistant shall enter upon the discharge of his duties, his appointment shall be approved by the presiding judge of the district court of the district for which such appointment is made; and said assistant shall take and subscribe to the same oath prescribed by law to be taken by the district attorney, and said appointment, approval, and oath shall be entered upon the records of said court.

The SPEAKER. The Chair directs particular attention to the following paragraph:

The Clerk read as follows:

The same fees and emoluments as the district attorney would be entitled to for the same service shall be allowed for the services of assistant district attorneys.

The SPEAKER. The gentleman from Mississippi, who reports the bill from the Committee on the Territories, will observe this does

actually create a large number of new offices under the authority of the United States; and although it does not designate any special salary to be paid to them except in the case just read, yet it would be perfectly germane to move as an amendment to the bill an appropriation of a sum of money specifically fixing their salaries. The rule which the House is now acting under, adopted at the beginning of this session, was intended to entirely do away with any indirect appropriation from the Treasury; and the Chair thinks this does bind and require the United States to make an appropriation of money should it become a law. The Chair further thinks an amendment to this bill, should it be considered in the House, fixing a specific salary for the officers authorized in this bill, would be a germane amendment which he could not rule out.

Mr. McKEE. I submit to the Speaker that when a proposition is made to give salaries to these officers, then, and not till then, does this question of order arise.

The SPEAKER. Does the gentleman from Mississippi contemplate that all the officers provided for in this bill shall serve without salary?

Mr. McKEE. Only with such salary as is now allowed by law; that, and not one dollar more.

The SPEAKER. But these offices do not now exist.

Mr. McKEE. An assistant attorney can hardly be considered as an officer at all, because at all times any United States attorney may get any other attorney to assist him in the discharge of his duties.

The SPEAKER. But how will it be in regard to the different judges of election precincts throughout the Territory?

Mr. McKEE. They would come in under the territorial law. There are such judges of election precincts in existence in that Territory now.

The SPEAKER. And they are authorized to be appointed by the United States for this purpose.

Mr. McKEE. There is a provision as to who shall appoint them, and that one at least shall be appointed by the governor instead of allowing the territorial Legislature to appoint them all. It merely provides for the appointment of one by the governor, and does not change the source of their pay in any respect whatever. It does not make any change in the least in that respect, but merely provides the governor shall appoint in certain cases.

Mr. GARFIELD. The Committee on Appropriations now reports appropriations to pay for prosecutions by the United States district attorneys in the Territories. Such appropriations come regularly in the appropriation bill, and in case any new offices are provided by this bill, we would have, of course, to provide for an appropriation to pay for their services.

The SPEAKER. The Chair cannot help thinking this bill will require for its enforcement a considerable appropriation of money from the United States Treasury. Does the gentleman himself state that it would not require any appropriation?

Mr. McKEE. I certainly do; and I also state that I would oppose any amendment offered to the bill in the House which would propose any appropriation, as I would oppose any appropriation bill to pay these officers any further salary than that which they now get. They do not get more money than the district attorney would get for discharging these duties without the assistance of these persons.

Mr. BUTLER, of Massachusetts. The gentleman from Mississippi will pardon me for a single observation. Now all the fees go to the district attorney up to a certain point. When he gets his salary the remainder is covered into the Treasury of the United States. The fees may amount to \$100,000, but he only gets a certain amount. If he has so many assistants authorized by law, who are to receive pay under this bill, then they are to be paid out of the fees and emoluments, and to that extent the money is to be taken out of the Treasury of the United States.

Mr. POTTER. They would have to be paid by appropriation either in this or some other bill.

Mr. ELDREDGE. I wish to make a suggestion.

The SPEAKER. The Chair desires to hear suggestions, because on a point of this kind he wishes to decide after the fullest deliberation.

Mr. ELDREDGE. I suggest that

the bill is so framed that an amendment could properly be added to it which would pay these additional officers, even if the bill should not provide that.

The SPEAKER. That is what the Chair has already suggested.

Mr. McKEE. Could not the same amendments be put into other bills?

The SPEAKER. That would not be germane. Any bill that can be considered in the House, as against the point that it should go to the Committee of the Whole, cannot have a germane amendment made to it appropriating money. The point is whether, if this bill is allowed to be considered in the House, an amendment affixing different salaries to the offices from what the committee proposes is not germane. The Chairman does not wish to put himself in this attitude, that a bill shall be considered in the House as against the point that it should have its first consideration in Committee of the Whole, and then exclude an amendment which would be obviously a germane amendment to the bill. Suppose for one moment—and the Chair invites the attention of the chairman of the committee to this—suppose for one moment that, where a bill reports certain fees and emoluments to be allowed to the assistant attorney, some gentleman proposes double those fees and emoluments, on what ground can the Chair rule that out as an amendment not germane?

Mr. McKEE. Then I contend that in all cases we shall have a strict construction of this rule.

The SPEAKER. That is what the Chair has been trying to do for the past three months—to give a very strict construction to the rule. And the Chair begs the attention of the House to this point, that any bill which may be legitimately considered in the House, as against the point that it shall go to the Committee of the Whole, cannot have a germane amendment appropriating money or property, and any amendment of that nature would therefore be ruled out at once. And that is one of the touchstones whereby to test the rule, that if a bill, even against the apparent wording of the text, is open to a germane amendment, making an appropriation, the bill becomes obnoxious to the point of order.

Mr. McKEE. Then we can hardly introduce any bill that touches in any way upon any office, but it may be ruled that it shall go to the Committee of the Whole.

The SPEAKER. The rule simply is, that the Committee of the Whole shall first discuss the bill. The gentleman from Mississippi (Mr. McKee) will observe that this is merely as to the process, the parliamentary process, not affecting the merits of the bill at all. The Chair has no right to rule, and does not desire to rule in any way at all, touching the provisions of a bill. He merely rules as to the parliamentary process to which it shall be subjected. And the Chair thinks, after having looked at the matter carefully, that this bill is unquestionably liable to the point of order, and must have its first consideration in Committee of the Whole.

The bill was accordingly referred to the Committee of the Whole on the state of the Union.

Mr. CROUNSE. I propose to move a substitute for the bill when it is considered in Committee of the Whole, and I ask that the substitute, which I send to the desk, may be printed.

There was no objection, and it was so ordered.—*Congressional Record.*

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## LEGAL NOTICE.

NOTICE IS HEREBY GIVEN, THAT I, Alma Eldredge, Mayor in and for the City of Coalville, Summit county, Territory of Utah, will appear at the U. S. Land Office, Salt Lake City, Utah, before the Register and Receiver thereof, on the 31st day of March, A. D. 1874, at 10 o'clock a.m. of said day, to prove my right to enter the S ½, N E ¼ and S E ¼ Sec. 8, S ½ NW ¼ and SW ¼ Sec. 8, E ¼ N E ¼ Sec. 17 and W ½ NW ¼ Sec. 26, Township 2 North, of range 5 East, of the Salt Lake Meridian, in the Territory of Utah, in trust for the several use and benefit of the occupants of Coalville in said county and territory according to their respective interests under the act of Congress, approved March 2nd, 1867, at which time and place any adverse claimants may appear and contest my right to enter the said land as aforesaid. Witness my hand this 15th day of February, A. D. 1874.

ALMA ELDREDGE,  
s 5w 3 1m Mayor.