should be interested. (See *ib.*, pp. 56, 57.)

"I do not intend to be understood as expressing any opinion in relation to the legality of these several enactments, but I only mention them to enable you to understand the present views of the Legislative Assembly, as expressed in a report to which I shall soon refer. This report was called out by reason of the non-payment of these costs. I having referred the claimants to the Legislative Assembly, they procured my certificate of their correctness and petitioned for payment. The petition was referred to a committee on claims, and, to enable that committee to understand the subject, the Council passed a resolution, requesting me to inform them of the amount of costs of holding the courts for the past year, distinguishing those which in my opinion should be paid by the general government from those payable by the Territory.

"With this request I complied, and gave the reasons of my opinion, acting on the principle that the reasons of an opinion are often of far more value than the opinion itself. In so doing I laid before them my correspondence with you, and referred to such of the laws of the United States as in my opinion had a bearing on the subject, and to the Utah enactments. I also went minutely into the usual officers of courts and expenses attendant upon them, and showed how these officers and costs are usually paid, in both civil and criminal cases, together with the payment of the incidental expenses, making my answer quite lengthy, too much so for insertion in this communication.

"This committee reported adversely to payment by the Territory, but upon what principle I have not been informed. The subject was then referred to a judiciary committee, composed of some of the best members of the council. This committee reported adversely to payment by the Territory, and gave their reasons. This report was adopted, therefore I proceed to notice the positions taken by them.

"They commence with what they call the equity of the principle involved in the question presented, saying that nearly all the costs of courts here have accrued by reason of emigration passing through here to California and Oregon, and that justice requires the United States to pay such expenses.

"My experience in the courts thus far justifies the firm belief that the facts here assumed are correctly stated. See my concluding remark in my letter of July 10. But with this equitable consideration, I am unable to see what I have to do, though I can see its bearing when addressed to the political branches of the government by whom and to whom that matter was then addressed.

"They further take the position that the United States and the Territory of Utah respectively must sustain and bear the expense, direct and incidental, of the officers and offices of its own creation, that the Supreme and District Courts were created, not by a law of Utah, but by a law of the United States, and as such, by the Organic Act, they have jurisdiction, civil and criminal, in all cases not arising out of the constitution and laws of the United States, unless such jurisdiction should be limited by a law of the Territory; that Congress, by extending the constitution and laws of the United States over the Territory and creating courts and appointing officers to execute these laws, had done what was her right and duty to do, but, as she had seen fit to go further and give jurisdiction to her courts and require her officers to execute the laws of the Territory, it had become her duty to sustain these courts and officers and bear their expenses; that the Territorial Legislature, by giving jurisdiction to these courts and dividing the Territory into districts, had done nothing but discharge a duty which Congress had required at their hands, but this did not require them to bear any part of their expenses; that these courts took jurisdiction in all cases, not by virtue of the Territorial laws, but by a law of Congress; that the Territories, by their Organic Acts, are not independent governments within the meaning of the term that all just powers emanate from the governed, but are subordinate, dependant branches of government; that Congress did not intend to give any court jurisdiction in civil and criminal cases at common law and in chancery, but the Supreme and District courts, and, as she had reserved the right to nullify any Act of the Legislative Assembly, she could enforce obedience to her mandates; that, with such a state of things, it is contrary to every principle of justice and sound legislation to require so dependent a branch of government to bear any part of the expenses of enforcing the laws; that the officers, having charge of that branch of public service, ought not so to construe the acts of Congress as to produce such results, so long as the laws will admit of a construction consistent with justice and sound legislation; that, in their opinion, the acts of Congress did not require such a construction, but on the contrary they strongly indicated, if they did not require, the construction contended for by them; and that the same principle which would require such dependencies to pay a *part* (of the expenses) would require them to pay the *whole*, and with that construction Congress might, at the expense of the Territories, impose upon them any embodiment of officers she, in her discretion, might see fit to send, which never could have been intended by the framers of the constitution.

"This report concluded by recommending that these costs, be referred to me, with the opinion of the council that they are payable out of the usual annual appropriations made by Congress for defraying the expenses of the Circuit and District Courts of the United States, and by recommending that the laws of Utah be so amended as to take away the jurisdiction of the Probate Courts at common law, civil and criminal, and in chancery, and abolish the offices of Territorial Marshal, Attorney-General, and District Attorneys, so that the United States, by her judges, attorneys, and marshals may execute the laws of the Territory. But, as this report was not made until a late day in the session, the laws were not so amended. Should the next Legislative Assembly in these matters concur with this, the laws above referred to will most likely be repealed or modified.

"In my opinion, whatever may be the opinion of others, justice *demands* the payment of these costs. I know of no principle in law, justice, or sound morals, which requires men to spend their time or money for the public good, without a reasonable compensation, and being of this opinion I certify these costs to you for your consideration.

"As I referred the council to several laws of the United States, I shall now take the liberty of calling your attention to some few enactments of Congress, having either a direct or indirect bearing on this subject. When doing so, I shall also refer to our correspondence.

"I more than indicated that the fee bill for the marshal and clerk was the fee bill of the northern district of New York, as it existed in 1836. The law to which you called my attention, found in the act of Feb. 28, 1799, sections 1, 3, and 4, evidently has reference to the courts of the United States sitting in the *States*, not the Territories. See Statutes at Large, vol. 1, pp. 62, and 25; sections 1, 3, and 4. But as this law regulated in part the fee bill of the northern district of New York in 1836, it is a *part* of the fee bill in this Territory. See the laws referred to in my letter of July 10. I therefore conclude that the fees of the U. S. attorney and marshal and the fees of the clerk, in business arising out of the constitution and laws of the U. S., do not depend on a law of this Territory.

"The construction of the law given by you in the latter part of your answer to my fifth and to my sixth interrogatory, though well enough if we were a State, and at first view so simple and apparently so reasonable, cannot be sustained by any correct rule of interpretation. At least such was and still is my judgment.

"In your answer to my third interrogatory, you treat these courts as courts of the United States, with authority to sit in cases not arising out of the Constitution and laws of the United States, which is the same view taken by myself and the council, but the conclusions drawn from that position by you and the council are very different, they insisting that Congress for that very reason intended to defray the expenses of the court, while you insist that the costs shall be divided between the two governments. I ask by what law do these United States courts sit in such cases? The answer will be, it must be, by a law of Congress. If by a law of the United States, and that law has not provided for a partition of the costs, what right have judges or heads of departments to interpolate such a provision? This would be to make, not to execute, a law. It would be demanding what Congress, the legitimate authority, had seen fit to dispense with.

"It may be thought that the nature of the subject *required* such a construction of the act, that the usage on this subject had been to require the Territories to defray the expenses of these courts when sitting in cases not arising out of the Constitution and laws of the United States, and for these reasons the act should be thus construed. True it is, when construing a law we look to the nature of the subject, and the prior or existing usage, it being reasonable to suppose the law was passed with reference to such usage. Being of this opinion, I wrote to you. See my letter of February 14th, 1852. If the usage has been as indicated in your letter, and certainly your office must furnish the means of ascertaining it, and you ought to know, it has exempted the United States from much expense of courts that she would by law have been compelled to pay, had the same Territories been organized into State governments.

"A little reflection will satisfy us of the truth of this position. The Circuit and District courts, sitting in the States, have jurisdiction in all cases arising out of the Constitution and laws of the United States, except a few, to which the Constitution gave original jurisdiction to the Supreme Court. See Constitution, Article III, Sec. 2. Also Laws of the U. S., chap. 20, of 1789. In this clause of the Constitution there are many cases enumerated which can not be said to arise out of the Constitution and laws of the United States, but arise out of contracts or otherwise between citizens of different States and foreign citizens or subjects. In some cases also they arise on promissory notes and bills of exchange, foreign and inland. See Statutes at Large, Vol. 1, p. 78, sec. 11. Nor can a case be removed from an inferior tribunal in a Territory to the United States courts by virtue of the 12 sec. of this law. Indeed the inferior and superior tribunals, having common law jurisdiction in the Territories by their organic acts, are United States courts, I should say, to all intents and purposes.

"Now we cannot suppose that Congress intended to lay a burden on the Territories, which would be the case to confine the payment of costs to those cases *only* that arise out of the Constitution and laws of the United States. See Organic Act, Sec. 9. 9th vol., Statutes at Large, p. 455-6. The same provision is found in all the organic acts of the existing territories.

"On the contrary, when we look into the organic acts for other objects and purposes, we find them conferring benefits, not laying burdens. Congress pays all the expenses, direct and incidental, of the legislative assemblies of the territories, provides for the election of the members of both branches, defines their term of office, and for the appointment of territorial officers, judicial and executive, and pays their salaries.

"With so plain an indication that Congress intended to execute the laws of the Territory, it is difficult indeed to find upon what principle they should refuse to pay the jurors attendant on these courts during any part of their sittings, or to pay for records, journals, dockets, seals and other incidental expenses indispensably necessary to the fulfillment of the duties required at the hands of the judiciary, so long as they have provided for the payment of these costs in the United States Circuit and District courts sitting in the States. See Statutes at Large, 1 vol., p. 277, sec. 4; p. 624, 625, 626, secs. 7 and 7. Indeed if it be conceded that the Supreme and District courts of the several territories are United States courts, then no violence is done by holding that these several laws for defraying the expenses of courts are in force in this Territory. See Organic Act, sec. 17, Statutes at Large, 9 vol., p. 458.

"The appropriation bills passed by Congress in every instance, at least in every one that has come under my observation, have provided for the payment of the costs, etc., of the Supreme, Circuit and District courts, without naming the territorial courts, which shows, to my mind, that Congress understood this general provision to embrace the Supreme and District courts sitting in the territories, and that Congress understood these courts to be United States courts. See the several appropriation bills relating to this subject. Indeed I am not aware that there is any doubt but that they are United States courts, having cognizance of cases not arising out of the Constitution and laws of the United States. The doubt exists in the rights and duties arising or flowing therefrom, you insisting, in substance, that each government shall contribute ratably or equitably to the expense of the same, but they insisting that legally and equitably the United States shall pay the whole. They insist that Congress has not made any provisions of law requiring a ratable devision of expenses, and you infer it from the distinction of National and territorial jurisdiction.

"In some cases the United States have made a distinction in relation to fees, etc., when the courts were sitting in their national capacity and when sitting in a territorial capacity. See 3 vol., Statutes at Large, p. 752, sec. 7, 8 and 9; also *ib.* p. 656; secs. 6 and 7; 4 vol., *ib.* p. 46, sec. 3; p. 165, secs. 6 and 7; 5 vol., p. 294, secs. 3 and 4. And in same the territorial courts have not been vested with cognizance of cases arising out of the Constitution and laws of the United States, but for these cases separate courts have been created. See 2nd vol., Statutes at Large, p. 284 and 285, secs. 5 and 8. But these distinctions have not at all times been observed. From this it is reasonable to infer that the practice or usage on the subject of costs has not been uniform.

"In conclusion I must say I shall feel extremely awkwardly situated if I find myself unable to compel the attendance at court of jurors and witnesses, and compelled to stop business in the middle of a session for the want of means to defray the expenses, or provisions for paying them, and sincerely hope I shall not find myself in such a predicament.

"Very Respectfully,
Your Obedient Servant
Z. SNOW."