MONEY AND MODERN JUSTICE.

Read well the annals of each day, con those dark pages o'er,
Sum up that woeful calendar, and count them by the score,
Those deeds of vengeful butchery, in fiendish orgies planned,
When darkness hides the deadly thrust—while vengeance guides the hand.

Each page is rife with hate and strife, with crime of every hue,
And all the varied feats of vice that wickedness can do;
Crimes not confined to station! full well those pages show,
That weeds of dire depravity in all positions grow.

On all these foul and varied crimes, these breaches of the law,
Justice, with balance fairly poised, her vengeful sword doth draw;
Yet, *if descending on the rich*, that downward stroke is stayed,
By money, slipped into the scales, the equipoise is swayed.

Thus, with impunity, the rich defy our nation's laws,
For money buys the cunning, and the cunning find the flaws.
E'en the arbiters of justice are tampered with by stealth,
Till powerless is our common law upon a man of wealth.

But no escape is there for those, the friendless and the poor,
For Justice stands with aspect firm, and shut is Mercy's door.
Full keen they feel the cutting edge, as Justice sternly draws,
For unerring falls the weapon *on the poor who break the laws.*

Is such our country's vaunted boast, of equa rights to man?
'Tis but a flaunt, a sickening farce, a mimicry, a sham,
While gold dropped in the eager palm the criminal can shield,
And money in the balance oft doth make e'en Justice yield.

O! is it thus that Justice cowers, when she should stand erect,
And cringingly withholds the stroke that she should e'er direct?
Shame on such meted justice!—the name is misapplied;
'Tis but corruption whited o'er, its infamy to hide. CHRIS. ——.

—*Burlington Hawk Eye.*

THE TERRITORIAL MARSHALSHIP.

OPINION OF ASSOCIATE JUSTICE P. H. EMERSON.

Delivered in the First Judicial District Court, at Provo, April 6th, 1874.

Two persons present themselves to this Court, each asking to be recognized as the Territorial Marshal.

One presents a commission from the Governor of this Territory, appointing him to that office, to fill a claimed vacancy, and bearing date March 3rd, 1874, some days after the final adjournment of the Territorial Legislature.

The other presents a certificate of election, duly certifying that, on the 20th day of February, A. D., 1874, by a joint vote of the Legislative Assembly, he was elected to the office of Territorial Marshal.

This action of the Legislature was under the provisions of a Territorial Act approved February 4th, 1852, creating the office and providing the manner in which it should be filled.

Both parties claim to have taken the oath of office and filed the necessary bonds. It is not only important that the Court should arrive at a correct conclusion, if that is possible, in this matter, but that, whatever the conclusion may be, it should do so at once; that the business of the Court may proceed without unnecessary delay, and that there may be at least an officer *de facto* recognized by the Court, to serve process and execute its orders.

An officer derives his right to an office from his election or appointment, and his commission is simply evidence of his title. When he has been fairly and legally elected, his right at once becomes absolute.

The right of the person claiming under the appointment of the Governor alone, depends upon whether there was a vacancy or not, and if a vacancy, such a one as could be filled by Executive appointment.

The Legislature by a joint vote having elected another person than the one appointed by the Governor, to the office of Territorial Marshal, and that person having complied with the requirements of the Act, as to acceptance and qualification, there can be no vacancy in the office, if that portion of the Act authorizing such a proceeding on the part of the Legislative Assembly is valid.

It must be claimed, on the part of the person basing his right to the office upon his appointment and commission by the Governor, that the Act referred to is valid, except so far as it points out the manner of filling the office, and as to that, that it is unconstitutional or opposed to the provisions of section seven of the Organic Act, and not within the power given to the Legislative Assembly by section six of that Act, and therefore void.

The Act provides, in its very first section, and starts out with this declaration, "That a Marshal shall be elected by a joint vote of both houses of the Legislative Assembly, whose term of office," etc., and then gives him certain powers and defines his duties.

The manner of selecting the incumbent is thus inseparably connected with the creation of the office, and if that is void the whole Act is void, and there is no such office or officer as Territorial Marshal. There is not a provision or intimation anywhere in the Act itself, that, if the Legislative Assembly have not the power to select the incumbent in the manner provided, it should exist anywhere else. The Legislative intent in the manner of filling the office is plain, and cannot be severed from that in the creation of the office. From the wording of the Act I must conclude that they would not have passed it with a provision that the office thus created should be filled in any other manner than that which is prescribed in the Act itself.

It is true, that a statute may sometimes be held void in part, and valid as to the remainder, but this can never be done without the most manifest usurpation of Legislative authority, except where the Court on an inspection of the whole statute can satisfy itself that it is enforcing a Legislative intention in so doing. It can never so hold, without the most manifest impropriety, when it is plain that to do so would defeat the Legislative intent.

No court is at liberty to split legislation into fragments, and arbitrarily, from its own notions of what the law ought to be, give effect to one fragment, to the rejection of the rest. The farthest a court can go is this—if, when a void part of a statute is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the legislative intent, wholly independent of that which was rejected, then it may be sustained. Applying this rule to the present case, if the portion of the Act providing for the manner of filling this office is void, then the whole Act is void, for the balance cannot be executed according to the legislative intent.

Is this portion of the Act void?

The same rule must be applied in construing Acts of the Territorial Legislature as in construing Acts of any other law-making body. It is a settled doctrine that no act of the Legislature can be declared void, unless it conflicts with some express provision of the constitution, and the Court must be able to point out the provision. An Act of the Legislature cannot be declared void unless it is plainly unconstitutional. The power of the Legislature is omnipotent, within constitutional limits, and its acts are to be regarded as *prima facie* constitutional.

The question is one of legislative power, and not of the wisdom, or even of the justice of the manner in which that power, if it exist, has been exercised.

While the Court will declare that Legislative power can only be exercised within the limits prescribed by the fundamental law, it is equally bound to keep within the sphere allowed to it by the same instrument. To do otherwise would be to arrogate the power of making the fundamental law what the Court may think it ought to be, instead of simply declaring what it is.

With these fundamental doctrines to guide us, can we say that this statute is in conflict with the Organic Act?

But whatever may be the opinion I may have upon the subject, I am bound by the decision of the National Supreme court. This very act has been before that Court and has been declared valid.

I refer to the case of *Snow vs. the United States ex rel Hempstead*, a recent case not yet reported.

Snow was elected to the office of Attorney-General by a joint vote of the Territorial Assembly, under section 4 of this Act, and the decision of the United States Supreme Court established his right to the office.

In rendering that decision the Court says: "That the power given to the Legislature is extremely broad. It extends to all rightful subjects of legislation consistent with the Constitution and the Organic Act itself. *And there seems to be nothing in either of these instruments which directly conflicts with the Territorial law. If there is any inconsistency at all, it is in that part of the Organic Act which provides for the appointment by the President of an Attorney for the Territory.*"

So with the portion of the Act now under consideration. If there is any inconsistency at all, it is in that part of the Organic Act which provides for the appointment by the President of a Marshal for the Territory. It is not intimated that there is any inconsistency in the manner in which the incumbent is selected by the Territorial law.

The Supreme Court say further, "But is that necessarily an inconsistency? The proper business of that Attorney may be regarded as relating to cases in which the government of the United States is concerned. *The analogous case of the Marshal*, and the separation of the business of the Courts as to Government and Territorial cases, seem to give some countenance to this idea. *At all events, it has sufficient basis for its support to establish the conclusion that there is no necessary conflict between the Organic and Territorial laws. The Organic Act is susceptible of a construction that will avoid such conflict*, and that construction is supported by long usage in this and other Territories."

Under these circumstances it is the duty of the court to adopt it, and to declare the Territorial Act valid.—*Provo Times.*

THE LIQUOR QUESTION.

DECISION OF CHIEF JUSTICE MCKEAN ON THE MUNICIPAL LIQUOR ORDINANCE.

Delivered in the Third Judicial District Court, Salt Lake City, April 6, 1874.

TERRITORY OF UTAH, } March
Third District Court. } Term, 1874.

Ex parte Charles Yeomans:

On the complaint, under oath, of B. Y. Hampton, the petitioner, Yeomans, was arrested on a warrant, taken before Clinton, a Justice of the Peace, tried, convicted of selling intoxicating liquors in Salt Lake City without a license, sentenced to pay a fine of $100, and to be committed until the fine be paid, at the rate of one dollar per day. The case comes here on a writ of *habeas corpus*, and the return thereto. The grounds on which the petitioner's counsel asks for his discharge, are considered in the opinion of the Court.

O. F. Strickland for the petitioner. Z. Snow for Salt Lake City.

McKean, Ch. J.: The petitioner claims that he made an arrangement with the city, whereby he was permitted to carry on the liquor business without first obtaining a license therefor, and that, on account of dull business and the scarcity of money, he was to pay from time to time, as best he could, towards the license; and that he had paid $100 thereon.

It does not appear that it was proved before the magistrate that such an arrangement was made with the city or with any one authorized to bind the city. Hampton, being present on the hearing of this court, and being interrogated, stated that he refrained for some time to complain of the petitioner, so that the latter might raise the money and obtain a license, but denied that he had any authority to bind the city.

It is claimed that the city should have proceeded, if at all, by summons in a civil action, and not by warrant in a *quasi* criminal prosecution.

Not only is it believed to be the almost or quite universal practice for municipal corporations, in this class of cases, to bring criminal prosecutions, but the statute here authorizes it. (See Laws of 1872, Chap. VIII., Sec. 2.) Until legislation shall repeal, or some court of appellate jurisdiction shall declare null and void this statute, this court will not disregard it.

The petitioner resides in one precinct, while the justice of the peace before whom he was tried is in another precinct of the city. Were this an ordinary civil action the magistrate might not have obtained jurisdiction of the case. (See Practice Act, sec. 509.) But there is no statute against, on the contrary there is a statute conferring, the jurisdiction exercised in this case. (See Laws of 1872, chap. VII.)

A few years since, an ordinance of this city required the payment of $3,600 per year for a liquor license. This Court, Mr. Justice Strickland presiding, held that ordinance to be void. Another ordinance was then adopted, under which $1,800 per year was exacted for a liquor license. In *Ex parte Mansfield, Atchison and others*, that ordinance was held by this court to be unreasonable and therefore void. There is now an ordinance under which $1,000 per year is exacted for such a license. The petitioner's counsel claims that the sum now exacted is also unreasonable, null and void.

It was shown in *Ex parte Mansfield, Atchinson and others*, that an ordinance might be reasonable in one city and not in another. The size, the location, the character and pursuits of the denizens, the multifarious circumstances of the particular city, and even of the surrounding country, all bear upon the question of the reasonableness of any ordinance upon any subject. Courts are invested with authority to declare reasonable or unreasonable such ordinances as shall be called in question.

Although I am not aware that any other city in the United States demands so much as $1,000 for a liquor license, yet I cannot say, that under, all the circumstances, that sum is too much in Salt Lake City at the present time.

I deem it my duty to dismiss the writ of habeas corpus and remand the petitioner.

Ordered accordingly.

Transplantation of Teeth.

In a former number of this Journal (April, 1871) we noticed the fact as established, that teeth are capable of being transplanted so as to retain their vitality, forming new tachments, like grafts on trees. Dr. Isidor L. Lyons, an eminent English dental surgeon, furnishes to the *London Lancet* for November the result of his experience in the operation. He refers to the two attachments that are severed in extracting a tooth first, the periosteal adhesion, and second, the nervous and vascular connection. There is no reason, he says, why the alveoloperiosteum should not again unite to the tooth, seeing that if a piece of periosteum be stripped off a bone it will reunite if placed in contact with the bone and kept at rest. The union of the divided ends of a nerve is also a recognized fact; but, even supposing the latter impossible, the tooth would merely be in a condition of one which has had its pulp destroyed, a common operation in dental surgery. Out of twelve on which he has operated, nine were successful, and three failures. It is difficult, he says, to induce patients to submit to an operation in regard to which they are so incredulous. The plan pursued by Dr. Lyons, he describes in these words: "A tooth which is to be replanted should be carefully extracted, and as little as possible of the surrounding tissues lacerated; it should then, unless the operation be simply for the destruction of the dental pulp, and where the periosteum is healthy, be immersed in some antiseptic fluid, such as diluted carbolic acid or chloride of zinc (the latter from experience being preferred); the socket should then be swabbed out some half dozen times with a strong solution of the same antiseptic employed. The tooth, if carious, should be plugged and returned to its place. If there is any thickening of the periosteum, fibrous growth, sac of abscess, or absorption at the extremity of the fang, it should be excised before replantation. Should the patient complain of pain arising from the operation, prescribe poppy fomentations, although the pain is rarely more than is due to the tenderness of parts from the laceration of soft tissues after the extraction of the tooth."

This process is substantially the same as was described in the *Pacific M. and S. Journal* nearly three years ago, and then credited to another English dentist, M. Coleman, who had succeeded in nine out of fourteen cases. Dr. Lyons makes no reference to him, except to mention that he "suggested" the operation. —*Pacific Medical and Surgical Journal.*

"Isn't It Worse For a Man, Father?"

It is two years since I left off the use of tobacco. I certainly did enjoy my cigar. I prided myself on my fine Havanas, and might have been seen almost any morning with one in my mouth, walking down to business and puffing away in a most comfortable manner.

Why I left it off was this: I had a little son about six years of age. He almost always hurried to be ready to walk down with me as far as his school. His bright face and extended hand were always welcome, and he bounded along beside me, chatting, as such dear little fellows only can. The city has in it many uncared for boys, whose chief delight seems to be to pick up pieces of discarded cigars and broken pipes, and with their hands in their pockets, puff away in a very inelegant manner. One morning it seemed as if litle Edgar and I met a great many of those juvenile smokers. I became very much disgusted, and pointed them out to little Edgar as sad warnings of youthful delinquency, talked quite largely, and said the authorities ought to interfere and put a stop to such a public nuisance.

A little voice, soft and musical, came up to me as I gave an extra puff from my superb Havana. A bright little face was upturned, and the words "*Isn't it worse for a* MAN, *father*?" came to my ears. I looked down on the little fellow at my side, when his timid eye fell, and the color mounted on his boyish cheek, as if he feared he had said something bold and unfitting. "Do you think it is worse for a man, Edgar?" I asked.

"Please, father, I think boys would not want to smoke, if *men* did not do it."

Here was the answer. I threw away my cigar, and have never touched tobacco since in any form. —*Wood's Household Magazine.*

THE BOAT RACE. — Cambridge adds another laurel to her wreath. In the annual race which took place yesterday between the two great universities of England there was, of course, the vast multitude which forms so striking a feature of the contest. The time fixed for the row (high tide) happened to fall just before noon. The day was one of those extraordinary spring days one sometimes sees in an English March, when summer throws all its gladness and beauty into a single welcome. We have not yet begun in America to understand the meaning of an English holiday. We have never comprehended the Derby, or a cricket match at Lord's, or a shooting festival at Wimbledon, or the university race on the Thames, and we cannot understand the national character of an event like that of yesterday. All England believes in the light blue or the dark blue, and millions turn aside from the feverish pursuits of business and pleasure to watch the fortunes of two groups of stalwart young men rowing for a half hour on the Thames. It is, no doubt, a trivial affair in some respects, but we have no events in the world that do not have their trivial aspects. Even Waterloo became a scene of body snatching and robbery. What we choose to see in an event like this boat race is the natural, earnest, hearty love of an Englishman for water and air and green fields, for the finest development of brawn, and the hope that we may come in time to have the same sentiment in America.—*N. Y. Herald, March* 29.

THE CUNARDERS. — "Always speak well of the bridge that has carried you safely over." In obedience to this adage I must here say a good word for the Cunarders, and especially for the *Algeria*, one of the largest and staunchest of the famous line. I have tried the "White Star" and the "Inman," but never crossed the Atlantic before with such a feeling of safety. That the Cunard steamers during the past thirty years have transported hun-