THE EVENING NEWS.

Thursday, - - Feb. 26, 1874.

JURISDICTION OF PROBATE COURTS, ETC.

Opinion of Hon. Z. Snow, Territorial Attorney-General.

[CONTINUED.]

"The second cause for the challenge was because the jurors had not been summoned by the U. S. Marshal. The judge said that in the early days of the Territory, when Brigham Young was Governor, and Judge Snow was on the bench, the U. S. Marshal served all processes from the District Courts; and for one and a half years he (McKean), ordered the clerk of his court to issue venires for juries to the United States Marshal. His associates did the same in their districts, and in doing so they followed the example of their predecessors. Under the acts of Congress the clerk was forbidden to issue a venire until ordered by the judge. He formerly acted under the laws of Congress. In the Englebrecht case the Supreme Court of the United States had decided that the United States Marshal was not the proper officer to summon a jury to try cases arising under the laws of the Territory, and he, McKean, humbly bowed to the decision; but the Supreme Court had not overruled the decision ousting McAllister from the office of Territorial Marshal. While the Englebrecht decision said it was not lawful for the United States Marshal to summon juries, it did not say that McAllister was the proper person to do so. The Supreme Court had held that the acts of Congress did not govern the courts of the Territories, but that the laws of the Territories governed the courts. Since that decision he had obeyed it strictly. Had not ordered the clerk to issue a venire, for the law compels him to do that. The judge had apportioned juries to six counties, because the Territorial law gave him that power, but further than that he had not interfered in the matter. Efforts had been made to induce him to again act under the laws of Congress, but he had always refused. The law said that the clerk should issue the venire to the Territorial Marshal, and if McAllister was that officer the clerk had done his duty; anyhow the clerk could not issue it to the U. S. Marshal. It looked to the judge very much as if the legislature had done all it could to oust the U. S. Marshal. Members of the bar might say affairs were in a vexing dilemma, but they could not be helped, the courts were not the legislatures.

"He next went to the third point of the challenge, that the jurors were not summoned by any officer but by a private citizen. If in deciding the Englebrecht case the Supreme Court had gone further and said that McAllister was the proper person to serve processes in the District Court, then the difficulty would have been settled; but the judge did not understand that the decision said that McAllister was the proper officer. Many were of the opinion that McAllister was not a legal officer for two reasons, first, that the legislature had no right to create the office; and second, after creating it, it could not be filled except on the nomination of the governor. While he was now of the opinion that he had been wrong in holding that the legislature had not the right to create the office, he was also of the opinion that, had the case of Orr vs McAllister been carried to the Supreme Court of the United States, that tribunal would have held that the office of Territorial Marshal must be filled by the nomination of the governor.

"He would be glad if he could hold one term of court without having such vexed questions to pass upon; but he supposed it could not be so. He sometimes erred in his judgments, but he was consoled by the fact that in States, where the judges were learned in the law and where almost everything was done by precedent, errors were sometimes committed. A grand jury in a Territory had a two-fold duty to perform — to investigate crimes against the laws of the Territory, and also those against the United States. He could conceive of a case where the jury would be illegal for the United States and legal for the Territory. Mr. Cary had challenged on behalf of the United States, and not for the Territory. The jury might be held to investigate crimes against the Territory, but no sooner would an indictment be presented than the attorney for the indicted party, if he did his duty, would challenge the array of the jury and raise the same questions raised by Mr. Cary. He felt differently when it came to the question of the life or liberty of a person than he did on the trial of a civil case. If the gentlemen were willing to raise no objections to a petit jury, and were willing to have their suits tried by twelve men, he would not object; but in regard to the grand jury he felt he would not be doing his duty if he did not discharge it. He would therefore sustain the challenge, and say to the jurors, 'You are discharged.'

"Judge Snow informed the jurors that the Territorial Marshal would pay them for expenses in coming from and returning to their homes. Time was given him to examine into the subject and to conclude whether he would appeal from the decision of the court in discharging the jurors or not.

"Court adjourned till Wednesday morning at ten o'clock."

A grand jury was called in the Second Judicial District in June, 1873, and in the First Judicial District in the fall and winter of the same year. In each, indictments were found. One man is in the Penitentiary and sentenced for thirty years, sentenced on the indictment so found. Others are yet pending. I therefore think I ought to be excused from expressing a more definite opinion.

In my judgment it is a rightful subject of legislation in this Territory to limit, fix, and set reasonable bounds to judicial authority in this Territory, and regulate the mode of procedure, both at law and in equity, including the mode and manner of appeals from one court to another, and to provide officers either by election or appointment. If the Supreme Court of the United States shall rule against the civil and criminal jurisdiction of the Probate Courts, then our code will need modifying so as to permit appeals from Justices of the Peace to the District Courts.

(TO BE CONTINUED)

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Centreville	6 33 "	4 16 "	.75	1.00
Farmington.	6 50 "	4 33 "	1.00	1.30
Kaysville.	7 07 "	4 52 "	1.35	1.75
Arrive at Ogden.	7 50 "	5 40 "	2.00	3.00
	No. 2. Pass'r.	No. 4. Pass'r.		
Trains leave Ogden.	8 40 AM	6 20 PM		
Kaysville,	9 31 "	7 10 "	1.00	1.30
Farmington	9 52 "	7 31 "	1.35	1.75
Centreville	10 04 "	7 44 "	1.66	2.10
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Name of Station.	No. 1. Passenger.	No. 3. Freight.	No. 5. Freight.	Fare.	Return Tickets.
Trains leave Salt Lake	A.M. 7 00	A.M. 6 10	P.M. 1 00		
Little Cottonw'd	7 25	6 50	1 40	50	75
Junction	7 32	7 15	2 05	75	1 25
Arrive at Sandy	7 45	7 25	2 15	1 00	1 75
Leave Sandy	Mxd 7 55				
Draper	8 10			1 25	2 00
Lehi	8 55			1 75	2 75
American Fork	9 20			1 90	3 00
Pleasant Grove	9 45			2 00	3 00
Arrive at Provo	10 30			2 50	4 00

	No. 2. Mixed.	No. 4. Freight.	No. 6. Freight.		
Trains leave Provo	P.M. 12 30				
Pleasant Grove	1 15			50	75
American Fork	1 40			60	1 00
Lehi	2 05			75	1 25
Draper	2 50			1 25	2 00
Arrive at Sandy	3 05			1 50	2 50
Leave Sandy	Pass 3 15	A.M. 10 05	P.M. 4 45		
Junction	3 20	10 15	4 55	1 75	2 75
Little Cottonw'd	3 35	10 40	5 20	2 00	3 00
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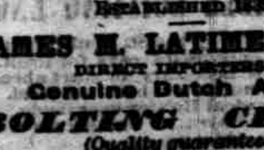

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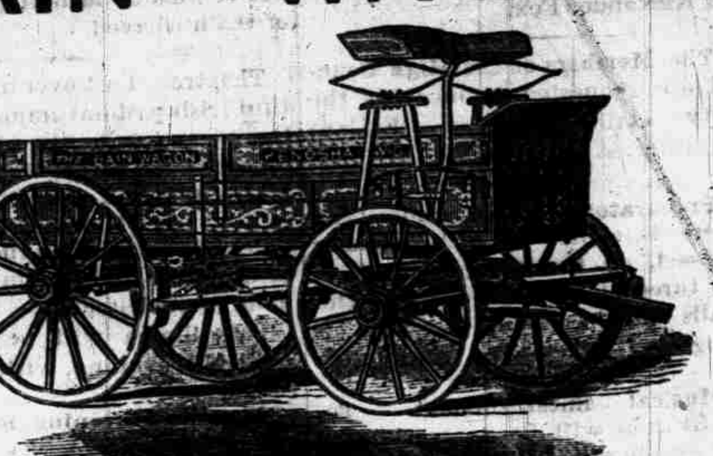

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d245 [illegible]

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Clifton, Wm. Pratt, " "
Bridgeport, N. W. Packer, " "
Franklin, L. H. Hatch, " "
Weston, John Maughan, Cache co., Utah
Clarkston, Simon Smith, " "
Newton, W. F. Littlewood, " "
Lewiston, W. C. Lewis, " "
Richmond, M. W. Merrill, " "
Smithfield, Samuel Roskelly, " "
Hyde Park, Wm. Hyde, " "
*Logan, W. B. Preston, " "
Providence, M. D. Hammond, " "
Millville, G. O. Pitkin, " "
Hyrum, O. N. Liljenquist, " "
Paradise, David James, " "
Wellsville, Wm. Maughan, " "
Mendon, Henry Hughes, " "

WM. B. PRESTON is Presiding Bishop over the foregoing eighteen Wards.

*Malad City, Daniel Daniels, Oneida co., Idaho
Samaria, Samuel Williams, " "

DANIEL DANIELS, Presiding Bishop over the two last named places.

Portage, O. C. Hoskins, Box Elder co., Utah
Deweyville, J. C. Dewey, " "
Calls Fort, Thomas Harper, " "
Bear River City, Wm. Neeley, " "
Mantua, H. P. Jensen, " "
*Brigham City, Alvin Nichols, " "

A. NICHOLS, Presiding Bishop over the six last named Wards.

Willard City, G. W. Ward.

WEBER COUNTY, UTAH.

L. J. HERRICK, Presiding Bishop.

*Ogden, L. J. Herrick.
North Ogden, Henry Holmes.
Plain City, L. W. Shurtliff.
Mound Fort, David Moore.
Lynne, Robert E. Baird.
Slaterville, Thomas Richardson.
Harrisville, David Rawson.
Marriat, S. P. Halverston.
West Weber, John I. Hart.
East Weber, A. Spaulding.
South Weber, John Cook.
River Dale, Sanford Bingham
Eden, Richard Ballantyne.
Huntsville, F. A. Hammond.
Hooperville, Gilbert Belnap.

DAVIS COUNTY.

Kaysville, Christopher Layton.
*Farmington, John W. Hess.
Centreville, Wm. R. Smith.
Bountiful, John Stoker.

MORGAN COUNTY.

Mountain Green, Eli Spaulding.
Weber City, C. S. Peterson.
Enterprise, Jesse Haven.

C. S. PETERSON, is Presiding Bishop over the three last named Wards.

Milton, L. P. Christiansen.
Littleton, W. G. Smith.
Richville, John Seaman.
Porterville, Alma Porter.
*Morgan City, Richard Fry.
Round Valley, Samuel Carter.

W. G. SMITH is Presiding Bishop over the six last named places.

Croyden, Ephraim Swann.

SUMMIT COUNTY.

Henneferville, Chas. Richens.
Echo, Elias Asper.
*Coalville, W. W. Cluff.
Unionville, Alonzo Winters.

WM. W. CLUFF presides over Morgan County and the above four Wards in Summit Co.

Wanship, G. G. Snyder.
Rockport, Edwin Bryant.
Peoa, Abraham Marchant.
Morell, John K. Lemon.
Kamas, W. Harder.
Parley's Park, Ephraim Snyder.

SAMUEL F. ATWOOD, Presiding Bishop over the above six Wards.

WASATCH COUNTY.

ABRAHAM HATCH, Presiding Bishop.

*Heber City, Abraham Hatch.
Midway, Henry S. Alexander.
Charleston, John Watkins.
Wallsburgh, Wm. E. Nuttall.

SALT LAKE COUNTY.

1st Ward, S. L. City, Jos. Warburton.
2d " James Leach.
3d " Jacob Weiler.
4th " Thomas Jenkins.
5th & 6th, W. H. Hickenlooper.
7th " Wm. Thorn.
8th " E. F. Sheets.
9th " S. A. Woolley.
10th " John Proctor.
11th " Alex. McRae.
12th " L. W. Hardy.
13th " E. D. Woolley.
14th " Thomas Taylor.
15th " R. T. Burton.
16th " Frederick Kesler.
17th " Nathan Davis.
18th " L. D. Young.
19th " A. H. Raleigh.
20th " John Sharp.
Sugar House Ward, W. C. A. Smoot.

(Capital of Ter. and co. seat S. L. Co.)

Brighton, A. H. Raleigh.
Big Cottonwood, David Brinton.
Mill Creek, Reuben Miller.
South Cottonwood, J. S. Rawlins.
West Jordan, Archibald Gardner.
South Willow Creek, I. M. Stewart.

TOOELE COUNTY.

JOHN ROWBERRY, Presiding Bishop.

E. T. City, G. W. Bryan.
Pine Kanyon, Moses Martin.
*Tooele City, John Rowberry.
Grantsville, William Jeffries.
St. Johns, G. W. Burridge.
Centreville, James Jordan.
Vernon, Hyrum Bennion.
Deep Creek, Edwin Tadlock.
Skull Valley, B. F. Knowlton.

UTAH COUNTY.

A. O. SMOOT, Presiding Bishop, Provo.

First Ward, J. P. R. Johnson.
Second Ward, A. H. Scott.
Third Ward, Myron Tanner.
Fourth Ward, Wm. Follett.
Lehi, David Evans.
Cedar Fort, H. F. Cook.
Fairfield, John Carson.

DAVID EVANS, Presiding Bishop over the three last named places.

American Fork, L. E. Harrington.
Alpine, T. J. McCullough.

L. E. HARRINGTON, Presiding Bishop over the two last named places.

Pleasant Grove, John Brown.
*Provo, A. O. Smoot.
Springville, Wm. Bringhurst.
Spanish Fork, A. K. Thurber.
Salem, alias Pondtown, Robt. H. Davis.
Payson, J. S. Tanner.
Santaquin, D. H. Holladay.
Spring Lake Villa, B. F. Johnson.

J. S. TANNER is presiding Bishop over the four last named places.

Goshen, Wm. Price.

JUAB COUNTY.

JOEL GROVER, Presiding Bishop

Mona, Edward Kay.
*Nephi, alias Salt Creek, Joel Grover.
Levan, Elmer Taylor.

SANPETE COUNTY.

Fountain Green, R. L. Johnson.
Moroni, G. W. Bradley.
Fairview, Amasa Tucker.
Mount Pleasant, W. S. Seeley.
Spring City, Frederick Olsen.
Ephraim, Kanute Peterson.
Manti, A. J. Moffitt.
Gunnison, J. S. Horne.
Fayette, John Bartholomew.

SEVIER COUNTY.

J. A. YOUNG, Presiding.

Salina, Peter Rasmussen.
Glenwood, Heleman Pratt.
*Richfield, Nelson Higgins acting.
Monroe, Moses Gifford.
Annabella Springs, Edward Roberts.
Joseph, Iver Isaacson.

MILLARD COUNTY.

THOMAS CALLISTER, Presiding Bishop.

Scipio, Daniel Thompson.
Cedar Springs, alias Holden, David Stephens.
*Fillmore, Edward Partridge.
Meadow Creek, W. H. Stott.
Oak Creek, P. D. Lyman.
Kanosh, Culbert King.

BEAVER COUNTY.

JOHN R. MURDOCK, Presiding Bishop.

*Beaver, John R. Murdock.
Minersville, James McKnight.

IRON COUNTY.

Paragoonah, S. S. Smith.
*Parowan, W. H. Dame.
Summit.

W. H. DAME, Presiding Bishop over the three last named places.

Panguitch, G. W. Sevy.
Cedar City, Henry Lunt.

KANE COUNTY.

Kanarra, L. W. Roundy.
Harmony, W. D. Pace.
Bellevue, H. H. Johnson.
*Toker, J. T. Willis.
Virgin, John Parker.
Rockville, C. N. Smith.
Long Valley, James Leathead.
Kanab, Levi Stewart.

WASHINGTON COUNTY.

Harrisburg, O. H. Adams.
Washington, J. W. Freeman.
*St. George, D. D. McArthur.
Santa Clara, Edward Bunker.
Pine Valley, Wm. Snow.
Pinto, Richard Robinson.
Hebron, G. H. Crosby.

LINCOLN COUNTY, NEVADA.

Clover, Wm. Pulsipher.
Panaca, T. J. Jones.

*County Seats.