

If the Supreme Court decides against it, it will show that your Honors misunderstood your legislative powers when the act was passed, and that these courts and the people who have resorted to them, have been wrong for twenty-two years, and that, adhering to them, we are still wrong. Such are the momentous questions involved.

The cases are scarce in which more important questions are to be settled in every point of view, and the consequence flowing from the decisions for weal or for woe will not end in twenty-two years more.

On the right of electing or appointing officers. There was a case of the United States against myself, in the Third District Court, in which the United States, on the relation of its Attorney for Utah, alleged that "Mr. C. H. Hempstead was, on the—day of April, 1870, the Attorney of the United States for Utah. That among the duties of the office, was the duty to prosecute in the several counties of the several districts of said Territory, all persons accused of offences, as well against the laws of the United States as against the laws of the Territory."

"That on the 12th day of September, 1870, one Zerubbabel Snow," [myself], "under color of some election of said Territory of Utah and appointment and commission thereunder, as Attorney-General of said Territory, without legal right, and well knowing the premises, did unlawfully usurp some of the functions of the said relator" [Major Hempstead].

"The said Z. Snow, claiming to be the lawful prosecutor in the District Court of the Third Judicial District for offenses against the laws of said Territory, did unlawfully enter."

To this I answered that "Congress had power to confer on the inhabitants of the Territory, the power to enact laws which belong to a State, in the capacity of a State, and that by the Organic act, Congress conferred full powers of legislation as a State upon the inhabitants of this Territory. That among these powers is the right to create the office of Attorney-General for the Territory and prescribe his duties. That pursuant to the act entitled 'an Act in relation to Marshals and Attorneys,' approved March 3, 1852, I, on the 19th day of January, 1869, was duly elected by the joint vote of both houses, then in joint session, to the office of Attorney-General for the Territory."

Then followed the averments of my qualifying as provided by law.

To this there was a demurrer. The courts in Utah rendered judgment against me. I took it to the Supreme Court of the United States. That court unanimously reversed the judgment of our courts and sustained me in the office. I beg leave to file the opinion of the Supreme Court for the information of the House—

#### "SUPREME COURT OF THE UNITED STATES."

"No 30.—OCTOBER TERM, 1873.

"Zerubbabel Snow, Plaintiff in Error, vs. The United States, ex rel. Charles M. Hempstead, U. S. District Attorney."

In error to the Supreme Court of the Territory of Utah.

"Mr. Justice Bradley delivered the opinion of the Court. 'The only question raised in this case is, whether, in the Territory of Utah, the attorney of the United States for said territory, or the attorney-general of said territory elected by the legislature thereof, is entitled to prosecute persons accused of offences against the laws of the territory.'

"The government of the territories of the United States belongs, primarily, to Congress; and secondarily, to such agencies as Congress may establish for that purpose. During the term of their pupillage as territories, they are mere dependencies of the United States. Their people do not constitute a sovereign power. All political authority exercised therein is derived from the general government."

"It is, indeed, the practice of the government to invest these dependencies with a limited power of self-government as soon as they have sufficient population for the purpose. The extent of the power thus granted depends entirely upon the organic act of Congress in each case, and is at all times subject to

such alterations as Congress may see fit to adopt.

"The organic act establishing the territorial government of Utah, passed September 9th, 1850, constituted a governor, a legislative assembly, and certain courts, and judicial and executive officers. Amongst the latter are an attorney for the territory, and a marshal."

"By the 6th section of the act, it is enacted that the legislative power shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of that act. By the 9th section, it is enacted that the judicial power shall be vested in a supreme court, district courts, probate courts and justices of the peace, whose jurisdiction shall be limited by law; *Provided*, that justices shall not try land titles, nor cases exceeding one hundred dollars in amount, and that the supreme and district courts shall possess chancery as well as common law jurisdiction; and each of the district courts is invested with the same jurisdiction in cases arising under the Constitution and laws of the United States as is invested in the circuit and district courts of the United States; and the first six days in each term are appropriated to such cases."

"The duties of the attorney are not specified in the act. The marshal is required to execute all processes issuing from said courts when exercising their jurisdiction as circuit and district courts of the United States."

"This recital shows that the business of these courts, when acting as circuit and district courts of the United States, is to be kept distinct from their business as ordinary courts of the territory; and gives contentment to the idea upon which the territorial legislature seems to have acted in appointing separate executive officers for attending the courts when sitting as territorial courts. By an act of that legislature, passed March 3rd, 1852, it is, amongst other things, provided that an attorney-general shall be elected by the legislative assembly to attend to all legal business on the part of the Territory before the courts where the Territory is a party, and to prosecute individuals accused of crime in the judicial district in which he shall keep his office, in cases arising under the laws of the Territory; and that for the other districts, district attorneys shall be elected in like manner with like duties. This law, it is understood, has always been acted upon until the recent decision of the Supreme Court of Utah, denying its validity. Similar laws have been passed and acted upon in other Territories, organized under similar organic acts. The attorney appointed by the President for the Territory has been accustomed to attend to the business of the general government, the same as is done by United States district attorneys in the several States; and the attorney-general and district attorneys of the Territory have attended to the business of the latter, and prosecuted crimes committed against the Territorial laws."

"It must be confessed that this practice exhibits somewhat of an anomaly. Strictly speaking, there is no sovereignty in a territory of the United States but that of the United States itself. Crimes committed therein are committed against the government and dignity of the United States. It would seem that indictments and writs should regularly be in the name of the United States, and that the attorney of the United States was the proper officer to prosecute all offences. But the practice has been otherwise, not only in Utah, but in other territories organized upon the same type. The question is whether this practice is legal, or in other words, whether the act of the territorial legislature was authorized by the organic act. If it was, the plaintiff in error in this case was erroneously ousted from performing the duties of his office of attorney general of the Territory."

"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. But is that necessary

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 the 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. In any event, no great inconvenience can arise, because the entire matter is subject to the control and regulation of Congress."

"The judgment of the Supreme Court of Utah must be reversed."

"D. W. MIDDLETON, C. S. C. U. S."

The act of the Governor and Legislative Assembly of this Territory, approved March 3, 1852, has the following—

#### "An Act in relation to Marshals and Attorneys."

"SEC. 1. Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That a Marshal shall be elected by a joint vote of both Houses of the Legislative Assembly, whose term of office shall be one year, unless sooner removed by the Legislative Assembly, or until his successor is elected and qualified. Said Marshal shall, before entering upon the duties of his office, take an oath of office, and file bonds in the penal sum of not exceeding twenty thousand dollars, conditioned for the faithful discharge of his duties, which bond with securities is to be approved by the Secretary of the Territory, and filed in his office."

"SEC. 2. Said Marshal shall have power to appoint one or more Deputy Marshals in each judicial district of the Territory, as the necessity of the case may require, whose term of office shall expire with that of the Marshal; but they may at any time be removed at his discretion."

"SEC. 3. It shall be the duty of the Marshal, or any of his deputies, to execute all orders or processes of the Supreme or District Court, in all cases arising under the laws of the Territory, and such other duties as the Executive may direct, or may be required by law pertaining to the duties of his office."

From the date of this Act till the present time, this officer has been elected as provided in this statute, and, until the case of the United States vs. McAllister arose in 1870, he has been recognized as being the legal ministerial officer of the court, in the cases named in the act, by every governor, every legislature, and every judge on the bench, without an exception."

True, some have claimed that, under the 7th section of the Organic Act, which is as follows:

"SEC. 7. And be it further enacted: That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory of Utah. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for; and in the first instance the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly, and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers."

(TO BE CONTINUED.)

ALL KINDS of Order, Receipt and Certificate Books printed and bound at the NEWS Office.

NOTICE TO CORRESPONDENTS.—Persons sending communications to the offices of the DESERET NEWS and *Juvenile Instructor*, are requested to write to the offices separately, to avoid confusion and insure attention to their orders. All letters to the latter office should be directed "Editor *Juvenile Instructor*." w 3 tf

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#### APPLICATION FOR A PATENT.

NOTICE IS HEREBY GIVEN, that Jacob Lawrence, E. L. Pease and Geo. B. Graft, where Post Office address in Salt Lake City, U. T., have made application for a Patent for the South-west Quarter of Section Twenty-four (24), Township One (1), North of Range Nine (9) East, Utah Territory, for valuable deposits, said location being recorded in vol. 1, page 4 and 5 of the Sicily Mining District Records. There is no adjoining claim. The name of nearest is the "Wood & Benson" claim, nearly east and distant half a mile.

GEO. R. MAXWELL, Reg. ster. w44 3m

Salt Lake City, Dec. 1, 1873.