tongue, and kneeling before images, exclaimed in astonishment, "There is not a piece of dress, not a sacerdotal function, not a ceremony of the court of Rome, which the devil has not copied in this country." Mr. Davis, in "Transactions of the Royal Asiatic Society," 11—491, speaks of "the celibacy of the Buddhist clergy and the monastic life of the societies of both sexes; to which might be added, their strings of beads, their manner of chanting prayers, their incense and their candles." "The benedictions given by the Lamas, the chaplet, religious retirements, the fasts, the processions, the holy water—all these are analogies between Buddhists and Roman Catholics. The Buddhists have also nunneries for women, and in Thibet there is a Dalai-Lama, who is a sort of Buddist Pope.

NOW THIS BUDDHISM,

with its concomitants existed some five hundred years before our era, so the theory of Father Bury and others, that it was copied from Romanism, falls to the ground; and it being the older we may justly conclude than Romanism was copied from it, and is therefore the Buddhism of the west There are, however, some things in which Romanism differs from Buddhism, The Buddhists *founded no inquisition*. They combined zeal with toleration. Theirs is a religion of much humanity. It seeks to save by the knowledge of the laws of nature. It makes morality consist in progress, by obedience to natural law. As to what has been gained by the change, I leave the reader to draw his own conclusions.

These ancient religions, except those established by Zoroaster, Moses, Mohammed and Christ embraced a great number of gods and deities. Idol worship is claimed by each for the others. There is much said and written about idolatrous worship and often we may seriously doubt the author's having a clear comprehension of the worshipper's real meaning. There is in my mind a very strong probability that most or all the images, paintings, etc., used by some of the so-called idol worshippers are each of them a symbol of a divine thought of the Creator. They reverence the Creator in His works, and only use the work as a reminder and not for real worship. It is also very possible that primitive or childlike races, tribes or nations, who are not supposed to possess great strength of mind, could better concentrate what powers of mind they did have to properly conceive of a Being, whether the true God or some other, whom they could not see, by having some object they could see to assist them. So the Roman Catholic kneeling before a picture of the Madonna does not mean to pray to the picture, but by means of the picture to keep his mind fixed on the invisible mother of Christ. Probably just so the savages use their so called idols as helps, and pray to God behind them; such is possibly the legitimate origin of idolatry.

There is, however, this one element in common, the faith in unseen powers above us, but not far from us, to whom we can speak and who can hear and answer prayer. No matter how much the hundreds of religions of the world may differ, they agree in this testimony: that man has a natural inborn faith in supernatural powers with whom he can commune, and to whom he is in some way, or some how related.

Respecting the idolatry of modern times, I have been somewhat astonished, considering the boasted Gospel light of this age, particularly in the last half century, and of this idolatrous worship I propose having something to say in another article, connecting it more closely with dissenters or seceders from the Roman Catholic church, and those who have since dissented from them or their respective creeds, which more immediately concern us today.

Respectfully, A. HAZELTON.

THE DECISION.

The Ogden City Division Question Determined.

THE TERRITORIAL STATUTE SUSTAINED.

The People Must be Allowed to Vote on Reincorporating.

Following is the decision of Judge Henderson in the celebrated Hays test case, which has been the subject of lively discussion for a week past in legal and political circles. It was delivered in open court at 8 o'clock Tuesday night, and is given below in full:

THE OPINION.

In the District Court of the First Judicial District of Utah Territory, Weber County. C. D. Hays, plaintiff, vs. Geo. L. Corey, registrar of Ogden City, Weber County, Utah, defendant.

This is a hearing upon a motion to quash an alternative writ of mandamus heretofore issued out of this court. The plaintiff is a resident and qualified elector, residing in the Second Ward of the city of Ogden; the defendant is registrar of this city, appointed by the Utah Commission. The writ alleges that the City Council of Ogden City, on the 22d of November, 1888, duly passed an ordinance, section 2 of which reads as follows:

"Sec. 2. There shall be held in said city, on the second Monday in February, A. D. 1889, and biennially thereafter, an election for the following officers, viz.: A mayor, a recorder, a treasurer, an assessor and collector, and a marshal, to be elected by the electors of the city at large, and two councilmen and one justice of the peace, by the electors of each municipal ward; whose term of office shall be two years, and until their successors are elected and qualified to office. Every legally qualified and duly registered voter shall be entitled to vote

ONLY IN THE WARD

in which he resides."

There are various other provisions of the ordinance dividing the city into wards and providing for the registration of electors in the various wards thereof. The petition further alleges that the plaintiff made application to the defendant to be registered as a qualified voter of the Second Ward, and demanded that he be registered as such, offering proof that he was duly qualified; that the defendant refused to so register him, but offered to register him as a voter in the city.

The defendant now moves to quash this writ. The plaintiff claims that the ordinance above referred to was passed by the city council in pursuance of chapter 47 of the laws of Utah of 1888, entitled "An act providing for the incorporation of cities," and claims that said act gives authority to the council to pass the ordinance.

The defendant claims: First—That said act of the legislature is wholly void: for the reason that it contains no enacting clause whatever.

Second—That if said act is valid, it does not authorize the ordinance in question.

Third—That said act is invalid, because it is in conflict with the act of Congress commonly known as the Edmunds act, and particularly section 9 of said act.

The act of the legislature above referred to contains no enacting clause whatever, and the defendant insists that this invalidates the act. The claim is that it does not appear upon its face to have been enacted by any authority.

THE ORIGINAL ACT

on file in the office of the Secretary of the Territory is signed by the presiding officers of the two houses and by the governor in the usual way. Various authorities have been cited to me upon this proposition, and I have examined them with such care as the limited time would permit. There is no doubt that it is the almost universal custom in enacting laws to preface them with a statement of the authority enacting. In England, although not required by any written constitution, it is the almost universal custom; and in this country nearly all of the states in their state constitutions prescribe the form in which it shall be stated; but in the Constitution of the United States and in the laws relating to this Territory there is no provision expressly requiring an enacting clause or prescribing any form thereof: and yet the practice has been almost universal in all of the territories to make use of one. The most interesting case upon this subject to which my attention has been called is what is known as "The seat of government case," heard in the Supreme Court of the Territory of Washington: [1. Washington Territory, 136.] In that case the validity of an act of the legislature was in question, locating the seat of government of the Territory, and was, like the act in question, wholly destitute of an enacting clause. The court, by a majority, held that the act was void; but Judge Wyche dissented from that opinion in a very exhaustive and able argument. The case is an instructive one, not only on account of the exhaustiveness with which it was examined, and the ability displayed in the opinions rendered, but also as a matter of history. From it we learn that one of the first acts ever passed in the Territory of Washington, and one which regulated the manner of selecting and summoning jurors and regulating various other judicial matters, was wholly wanting in

AN ENACTING CLAUSE

but that its legality and validity was never questioned. The dissenting opinion above referred to reviews in detail all the authorities upon the subject up to that time. But since that time various states have passed upon the subject. Of course, the question is not the same when it is presented in a state court where the constitution of the state expressly provides for an enacting clause and prescribes its form: but by analogy they bear upon the question before us. There seems to be two classes of opinions upon the subject. In some states it is held that the constitution prescribing the form of an enacting clause must be followed literally, and that any departure from it invalidates the act; in others, that the constitutional provision is but directory, and if substantially followed it is sufficient. I have not been able to examine the text of all the cases upon this subject, but one which is quite in point [Cape Girardeau vs. Riley, 52 Mo., 424; also reported in 14 Am. Rep., 427] is at hand. In that case the constitution of Missouri provided what the style of the laws of the state should be, and the court had before it an act in which the entitling clause was omitted; but they held that the provision of the constitution was merely directory, and that the want of an enacting clause would not invalidate it. The question is one that is not free from doubt, and I have not had the time and opportunity to examine it as exhaustively as should be done if this case was to wholly turn upon it; but from the examination which I have been able to give it, I am of the opinion that the want of an enacting clause does not invalidate the act.

The next question in order is the

CONSTRUCTION OF THE STATUTE.

The contention on the part of the city, which by its counsel has appeared and participated in this argument, is, that the fair construction of the act grants the authority assumed to the common council. And this depends wholly on the question as to whether section 18, of article 1, applies to the city of Ogden or as to whether it applies only to cities which are incorporated or are reincorporated under the act. The act in question is one providing for the incorporation or reincorporation of cities, and incidentally amending the charters of cities already in existence. The act bears evidence of hasty if not careless construction. The first five sections of article 1 are general in their nature, and provide the manner in which territory not already incorporated in any city may incorporate under the act. Sections 6 to 9, inclusive, provide the manner in which cities may reincorporate under the act. The balance of the sections of this article to 14 are of a general nature. Sections 14 and 15 provide that the municipal corporations now existing in the Territory and those thereafter organized are divided into classes according to population. Section 16 commences the provision in the act relating to municipal government. It is an entire change of subject, although not separated and divided by being set apart in a separate article; but sections 16, 17, 18 and 19 all relate purely to city government, and they are the important sections of the act; they are the sections which establish the rule of electing in certain classes of the cities certain of their officers by districts or wards.

This court held upon a matter recently before it that section 14, of article 1, referred to cities already existing and not incorporated or reincorporated under the act, that it was the duty of the Common Council to take the steps necessary to ascertain the class to which the respective cities in the Territory belong. I am confirmed in the opinion that I then had—that that section applies. By section 6 of article 1 it is provided that when the inhabitants of a city petition the common council to take steps to

REORGANIZE UNDER THE ACT,

the council shall call an election for that purpose and give notice of the class to which it would belong if reincorporated. That action certainly is to be taken before the reincorporation, and the class to which the city belongs must be determined. Section 14 provides for that, and provides that the proclamation of the Governor shall establish that fact; so that the common council when they are petitioned for reincorporation have judicial knowledge of the class to which the city would belong and could give the notice. Besides this, there are various sections of this act which are made expressly applicable to cities already existing which recognize the difference between the classes. In the city of Ogden the Common Council have performed the duty required by Section 14. The Governor has issued his proclamation assigning the city to the second class, and it is now claimed that it becomes a city of the second class for all the purposes mentioned in the act, and that Section 18 of article one applies. There is no doubt but that the city is a city of the second class, as classified in Section 14, for the various purposes enacted by this statue that are made applicable to cities already existing without reincorporation. But it does not necessarily follow that every provision of this charter referring to cities of the second class is applicable. So the question recurs: Do sections 16, 17, 18 and 19 refer to and are they made applicable to cities now incorporated but not reincorporated under the act? The first mention in this statute of cities already incorporated is in section 6 of article 1. That section relates purely to such cities. The language of the section is: "Any incorporated city or town now existing in this Territory." Section 7 is upon the same subject, follows it immediately and says: "The mayor of such city * * * *" Section 8 is upon the same subject and has like reference, and 9 is the same, and there ends the subject so far as corporations not incorporated under the act are concerned.

BUT THE SUBJECT IS DROPPED

and other matters are legislated upon. We next come to this class of corporations in 14, and there the language is, "the municipal corporations in this Territory now existing," plainly indicating, as plain as language can make it, that intention; but the subject upon which section 24 enters is wholly dropped at the end of section 15, and section 16 enters upon a wholly new and independent subject and matter, to-wit: That of city government, and the language is: "All incorporated cities of the first and second class," and the language is the same to and including section 18.

THE CLAIM OF THE CITY

is that this language following section 14 plainly refers to the same corporations that are referred to in section 14; but it is to be observed, as before stated, that is a wholly new and independent subject, and this argument loses some of its force by that fact. Section 5 of article 20, being substantially the last section of the act, provides that the various articles and sections of the act commencing with article 4 "are hereby made applicable to all incorporated cities now organized in this Territory, and shall be construed to be cumulative and supplemental to the charters of said cities." But the sections under consideration are not mentioned. The legislative habit in this act, when going from a subject, foreign to this inquiry, to a subject of incorporated cities already existing, of expressing that by referring to them as "cities now existing in this Territory," is fairly well established. Section 18 has not this language. Again, when we come to section 1, of article 6, entitled,

"OFFICERS;

their powers and duties," there is a reenactment of the principle contained in sections 16, 17, 18 and 19 of article 1, and this section is one that is made expressly applicable by the last section of the act to cities already existing, and at the close of this section is this important proviso: "Nor shall this act in any manner interfere with the existing qualifications of the electors or officers, or with the manner of selecting the officers." Ogden City by its present charter provides that its councilmen and aldermen shall be selected by the city at large. Here is an express declaration in the act itself that it is not intended to change the manner of selecting officers in cities already existing, and this was no doubt added to this section in view of the fact that the section itself was made applicable to cities already existing. If this is true, then most certainly it could not have been intended by the legislature that section 18 should apply, because they are substantially the same. Again, article 1 down to section 16 is wholly of a general nature. It does not in any manner relate to city government. They are none of them such provisions as would be proper in a city charter; but, as before stated, with section 16 begins the subject of municipal government. The last section of the act before referred to goes back over the entire enactment relating to city government and especially points out what parts thereof shall apply to cities already incorporated and what parts thereof shall be construed to be cumulative and supplemental to the charters of said cities. In all of the provisions of the act before those entering upon the subject of city government they provided by the language of the sections themselves as to what corporations they should apply; but they intended by this last section to point out such articles and such sections relating to city government as did apply. Section 18 is one that applies to city government and regulates city affairs, but is not mentioned in this section. It is a well understood rule of the construction of statutes that

THE EXPRESS MENTION

of one thing excludes its opposite. Again, the most material difference between this act and the charters of the cities before existing in this territory, is the principle contained in sections 16, 17, 18 and 19 of article 1. The legislature was careful to provide that no incorporated city should become reincorporated under the act without a vote of its inhabitants. It would be strange indeed, if they had provided that the inhabitants might vote upon the shadow while they assumed to provide the substance for them. There is still another test which to my mind is conclusive of what the legislature intended. No casual reader of this act, when he reads in section 6 of article 1 the provision that when the common council of a city call an election to determine the question as to whether it shall be reincorporated under this act or not, they shall give notice of the class to which the city will belong if reincorporated, will doubt for a moment that it was supposed by the legislature that the class to which the city belonged was one of the things that the electors should know; because it might determine in their minds the question as to whether they would reincorporate or not. It goes upon the theory that if they reincorporated, their condition and the government would have to depend somewhat upon the question as to which class they belonged; and yet, if the construction which is contended for by the city in this case is correct, then there is not one provision of this act, from first to last, which recognizes any differences but what already applies to every city in this Territory. Not a single reference can be found in the act to the subject of the classification of cities or the difference in their management but what already applies if the contention of the city is correct.

IT IS PLAIN

to me and it must be to every casual reader of this act that the question upon the reincorporation, as to which class the city would belong, was one of substance. I am clearly of the opinion that it was never intended by the legislature that sections 16, 17, 18 and 19 should apply to cities already incorporated until they took the necessary steps under section 6 to reincorporate.

In the argument some stress was laid upon the fact that the common council of the city had already taken the steps provided for in section 14 to have the class of the city determined, as though it were in the province of the council itself to say whether these sections should apply or not. The language of section 14 absolutely classifies the cities. They stand classified by the legislature itself for all the purposes to which this act refers to them, but for no other, and it depends in no wise upon what the Common Council may or may not do. In taking a census of the city and ascertaining the number of inhabitants they merely ascertain a fact which assigns the city by operation of law to one or other of the classes; and when they become reincorporated, then such provisions of this act are made applicable to cities incorporated and reincorporated under it as are applicable to it in addition to those which are made applicable whether they are incorporated or not, and the sections here in controversy in my judgment are among them.

This being the result at which this court arrives, it becomes wholly immaterial to discuss the other subject as to whether this ordinance in various other of its provisions is repugnant to the Edmunds act or not. According to this view, there is no authority in this city to register voters in precints and wards, and the plaintiff only complains that he has not been registered in the Second Ward of this city, the registrar offering to register him as a voter of the city at large; and this is all that he is entitled to.

The motion to quash should be granted and the writ dismissed.

H. P. HENDERSON.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One red-roan 2 year old past HEIFER brand on left ribs resembling  and an illegible brand on left hip, crop off left ear and slit in right, has with her a white heifer calf.

If damage and costs on said animal be not paid within fifteen days from date of this notice, it will be sold to the highest cash bidder, at Farmington estray pound, at 1 o'clock p. m., December 26th, 1888.

Dated at Farmington precinct, Davis Co., Utah, this 11th day of December, 1888.

JOHN PREECE,
Poundkeeper.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One bay MARE, with bell on her neck about 10 years old, has a young colt, branded S on left shoulder.

One light bay MARE, 2 years old, right hind foot white, white spot in forehead, branded S on left shoulder.

One dark bay HORSE, 3 years old, branded S on right shoulder.

If the above described animals are not claimed and taken away within 10 days from date, they will be sold at the estray pound at Lake View, Tooele County, Dec. 17th, 1888. JOHN B. SMITH,
Poundkeeper.
Lake View, Tooele Co., Dec. 17, 1888. 3