

SPEECH OF HON. JOHN F. KINNEY.

DELIVERED IN THE CONVENTION, COUNTY COURT HOUSE, GREAT SALT LAKE CITY, JANUARY 23D, 1862.

[REPORTED BY J. V. LONG.]

After the signing of the Constitution by the Delegates, Hon. Chief Justice Kinney being present, was called upon to address the Convention, and spoke as follows:

MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION:

I cannot but feel deeply sensible of the honor conferred upon me by being called to address you. A mere spectator, not expecting to speak, I can scarcely hope to be able to say anything that will enlighten, or strengthen the members in the discharge of their high duty.

I see before me delegates from every county in this Territory, some residing four hundred miles distant, not a man elected to the convention who is not at his post, all no doubt fully impressed with the responsibility of "the work," that of preparing for themselves and posterity a Constitution, the highest civil trust that can be delegated to the citizen; for, Mr. President, you well know, the departments of government, executive, legislative, and judicial, not only derive all their powers from the Constitution, but must be obedient to the Constitution.

The deliberations of this body, and the unanimous vote in favor of adopting the instrument just read as your fundamental law, prove to my mind, that the people are not only in earnest in changing their form of government and asserting their rights under the Constitution, but also, that there is no dissenting feeling on the subject among those represented on this floor.

Having been more or less connected with the people of this Territory since 1854, appointed twice (under different administrations) your Chief Justice, personally treated with courtesy, and as a Judge with respect and confidence, it is not strange that I should regard with more than ordinary interest the proceedings of this Convention, and your application for admission into the family of States.

Mr. President you are endeavoring to shake off your old worn out Territorial garments, a poor legacy at first, and affording indifferent protection, but now threadbare and rotten from age and service, and in their place put on the Queenly Robe of State Sovereignty. The cord that has bound your hands, and fettered your feet, you propose to exchange for one of fraternal love, uniting you for ever in this hour of her calamity, with the Sisterhood of States. In doing this, the people are only availing themselves of a right guaranteed by the Federal Constitution, and Congress in admitting you, is but performing a duty enjoined by that sacred instrument.

The right of "self government" underlies the Constitution. It was boldly asserted by our fathers before the revolution. It is older than Constitutions, or Governments. It is man's birthright, derived as an inheritance from the Supreme Being.

It has been said of the Israelites, Spartans, and Romans, who framed their Governments according to their own will, that they did it not by any peculiar privilege, but by a universal right conferred upon them by God and nature. Our fathers understood this, and to maintain the right of self government, the war of the revolution was fought against the most fearful odds. God stood by the right, the principle triumphed, and was incorporated into the Constitution, as the basis of our Republican Institutions, the irrefragable right of the American citizen, so long as that Constitution is the paramount law of the land. I repeat, Sir, the American revolution was fought to sustain this principle.

Governors and Magistrates were imported from the Mother country to rule over the people of the Colonies. In the selection of these and other officers, they exercised no choice. Their legislation was first submitted to the Governor, and unless it met with his royal sanction, it was void. In case he gave his assent, it was then transmitted to the Crown for the approval of "His Majesty." If it passed both these trying ordeals, it was valid, and this is one of the causes of complaint, set forth in the declaration of Independence. Here was a flagrant violation of the principle of which I have spoken. Our fathers having fled from civil and religious intolerance, infused the spirit of liberty into their descendants of the revolution, and in taking that step of moral sublimity, which caused Kings to tremble upon their Thrones, they declared, "That all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these, are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Mr. President, do the people of Utah enjoy this Divine, as well as Constitutional right of self government, made if possible more sacred by the precious blood of our Ancestors. They do not. With all these historic truths looking us full in the face, a Territorial government has been inaugurated for you, and under which you have lived for near twelve years, almost in the exact similitude of the one established by Great Britain for the Colonies. Your Governor, Judges, and other civil officers, are sent among you, all forced upon you, against your consent. True you are entitled to a local Legislature, as were some of the Colonies, but by a provision in the organic

Act, the Governor has absolute control over all your Legislation. The most important, as well as the most important bill that passes, it may be without a dissenting vote, is liable to be thwarted, not by a Veto Message assigning reasons for withholding his approval, but by simply folding his arms, and looking on with stolid indifference. This power I say is conferred upon the Governor, and has been exercised in the way mentioned more than once, or twice, or a dozen times, and some of your most vital Legislation has failed without any reasons having been given why the bill met with disfavor. In the hands of a wicked and obstinate man, the power is effectual to block the wheels of Legislation, and after spending forty days, the allotted time, in faithful duty for the best interest of your Constituents, you find your labors all in vain; your self government an insult to your intelligence, a mockery to your American spirit, and a libel upon the Federal Constitution.

As violative of a great principle of free government, it matters little whether the power is exercised or not. You are subject to this tyrannical oppression by the Act of Congress that gave your people Territorial existence; although such power is withheld from some other present Territorial Governors.

But, Mr. President, the analogy between the colonial government, and your own does not stop here. By a provision in your Organic Act, it is established, that "All the laws passed by the Legislative Assembly, and the Governor, shall be submitted to the Congress of the United States, and if disapproved, shall be null and void." The Congress here, takes the place of the British Crown in Colonial Legislation. Our fathers complained, and successfully asserted a different principle, that the right to make laws, was inherent in the people to be affected by them. You assert the same right in your Constitution, and earnestly demand that this dear bought provision be extended to the people, by admitting them as a Sovereign State.

It has been gravely contended by the Executive of this Territory, that all your laws remain in abeyance until Congress has passed upon them. While I do not agree with this sentiment, still the power is vested in Congress to render them null and void, and if the Governor approves, you are still obliged to run this Congressional gantlet.

The people here, then, have two absolute and independent sovereignties to which they, the source of all power, are subordinate, when they seek to express their will through their legislature, in framing their own local laws. First, the "negative veto" of the Executive. Second, the absolute veto of the Congress of the United States. This is almost precisely the power exercised, and contended for, by Great Britain over the colonies; and resistance to it, as I have said, brought on the revolution and established "self government," which can never be enjoyed by the people of Utah so long as they remain in Territorial bondage.

Again, Mr. President, it has been seriously contended by able jurists, that there is no authority given to Congress by the Constitution to organize these Territorial governments. It will not be denied that Congress can exercise only such powers as are conferred, nor that the enumeration of certain specified powers necessarily exclude all others. No express power is given to form such governments; and if delegated at all, it is only so by implication or construction. It does not become me, sir, occupying a judicial position, to give my views in a speech upon a question involving the very existence of your present government. As a judge, I can only bow with submission to the decision already given by the highest judicial tribunal of the country.

One thing, however, I will say *en passant*: if the power is derived from the Constitution, why is not the Constitution observed, and your judges appointed during good behavior, according to its provisions. Is not the office created by Congress, and must it not look to the Constitution for its authority? Does not the Constitution provide for creating inferior courts, and prescribe the tenure of office "during good behavior?" But we are told the courts provided for by the Constitution are not Territorial courts, as the judges could not be so appointed, because the government is temporary. Exactly. Then we ask again, Where is the power? Well, if I must answer the question, I will say, in the "Dred Scott" decision.

The truth is, Mr. President, it will not do to investigate too sharply, or criticize too closely, these Territorial governments. We have acquired territory far beyond the expectation of the framers of the Constitution, for the government of which they made no provision. If error has been committed in creating such governments, antagonistic as they seem to me, with the spirit and genius of our republican institutions, the best way to get rid of the evil, and remedy the difficulty, is to exchange them for State governments, the only kind expressly provided for by the Federal Constitution. But if they must exist give the people the right to elect all their officers, and if you tax them directly, or indirectly, a representative in Congress. Taxation and representation are twin sisters. Ah! yes sir, "twin relics," if you please, not of barbarism, however, but of American independence, glorious fruits of the revolution.

Are the people of Utah taxed? Most certainly; taxed just as our fathers were taxed, to support the parent government. Taxed just as much as the people of the States are taxed according to your population and consumption. Your tea is taxed, your sugar, coffee, your woolen, and linen; everything that

you eat, drink and wear, that is imported, and conceals the tax, and it goes into the national said that taxation "hides." But, sir, our fathers go together. They were taxed "in kind," should way, and also deprived of a representative in the British Parliament. To this they would not submit. You know the result. Has Utah ever had a representative in the Congress of the United States? Never. You have a delegate, but he is not permitted to vote, and cannot vote for your interest in regulating the tariff, or any other measure which duly concerns your prosperity. He is an outsider, occupying much the same position that I do in this Convention (privileged through your courtesy to take a seat among you, for which accept my thanks) to speak, but voting, all that constitutes legislation, is denied him.

Sir, I see by the proceedings of your late Legislature that Utah has assumed payment of the direct Federal tax, assessed to help carry on the war. Some lawyers might suppose that a direct tax could only be apportioned according to the Constitution, "among the several States." I rejoice that Utah has not taken this view. That she is willing, poor as her people are in ready money, to bear her proportion of the expense in sustaining the government, "the Constitution and the laws," and that too without asking or caring whether the tax is Constitutional or not. Money could not be appropriated for a better or holier cause. And Utah has set her sister Territories a noble example in this respect which they will do well to follow. Rebellion must be put down, the Constitution must be preserved, whatever the sacrifice.

But, Mr. President, the question recurs, will Utah, or Deseret as you have christened your State, be admitted? I ask, guided by the Constitution, why not? Has ever a State been denied this privilege? Have not twenty-one been admitted to the Confederacy, since the adoption of the Constitution? Should not the same right be accorded to Deseret that has been to other States? And while the doors of Congress have been thrown wide open to receive them, are they to be closed against you? Is Utah for ever doomed to remain in colonial vassalage, barred of her Constitutional rights, denied the precious boon of "self government," rendered doubly dear to her citizens in consequence of isolation and the strangers appointed to rule over them? Is not your population, claimed to embrace some eighty thousand souls, sufficient to entitle you to a respectful and favorable consideration? Have not the people settled these valleys (pressing to the eye, at the time of their arrival, the appearance of vast deserts) under the most painful circumstances, and has not their industry made them literally "blossom as the rose?" Have not villages and cities sprung from their hands as if by enchantment? Have you not here made a resting place for the weary emigrant while pursuing his toilsome journey to the "New El Dorado," and has he not here been fed, and refreshed and gone on his way rejoicing? Have you not done more to settle an empire on the Pacific than all the ships that navigate those peaceful waters? Is it not by the products of your soil that the great "Overland Mail" is enabled to perform its daily trips across the continent? Was it not by reason of the enterprise of President Brigham Young, the leader of "this people," that labor and means were furnished to complete, in an incredibly short space of time, a telegraph reaching from "ocean to ocean," electrifying the hearts of patriots thousands of miles distant from the stirring scenes of life?

Sir, the very statement of these questions is sufficient to extort an affirmative answer from every candid and intelligent mind.

But, Mr. President, forcible as these reasons appear for securing favorable action, paramount to them is your right by virtue of the Constitution. Sec. 3, Art. 4, provides "New States may be admitted by the Congress into the Union. In this section no conditions are annexed; no form of government prescribed for the 'new State.'" The right only to admit is vested in Congress. The word "may" is used, and some have doubted whether the exercise of the power was not wholly discretionary. Without the assistance of the following section, it is clear to my mind, that the framers of the Constitution never contemplated placing in the hands of Congress the power to play the tyrant, by excluding from the family of States meritorious applications for admissions. The government was instituted by our fathers for themselves and their descendants, and the blessings of it, like the dews of heaven, were to descend upon all alike. The converse of this, would seem to empower Congress to confine the Constitution and government to the "original thirteen." The word "may," by our ablest jurist, is not unfrequently construed to mean "shall," and they never hesitate in doing this when the spirit of the law seems to authorize such construction.

But, sir, we are not left in doubt, or to uncertain construction, as to the imperative duty of Congress. Section 4, of the same article provides, "The United States shall guarantee to every State in this Union a republican form of government." How can such guarantee be performed unless the State is admitted? You will observe that by the 3d section "new States" may be admitted. That is the State government must be first organized and not until then is the duty of Congress manifest. Then, upon application, the faith of the United States by the 4th section is pledged for the faithful performance of the duty imposed on Congress by the 3d section. The 4th section must have reference to the "new States" mentioned in the 3d section,

as it contains the only provision in the Constitution prescribing the kind of government required for the new State, "republican in form." If this does not follow as a legal form, there is no form of government prescribed for the new States, and they may be received upon petition, without ever making proof of their Constitution, and hence Congress would be unable to judge of the sort of government inaugurated for the proposed State. This is "simply absurd." The word "guarantee" is well understood in law. The United States by the Constitution becomes guarantor, or surety for a republican "form of government." Suppose a State already in the Union changes the form to one not republican? It neither seeks nor desires to resort to the guarantee. Of what benefit is it then? The Constitution contains ample provisions for bringing back such disloyal State, and the guarantee could not apply. It is not invoked and was intended for a different purpose. If I am right in this, Mr. President, *a priori* the guarantee of the United States is for Deseret, and all other new States seeking admission, and the pledge can only be executed by accepting you into the Union, thereby securing for your people a republican form of government.

I have listened with much interest to the reading of your Constitution, and in my opinion it is unexceptionable, sufficiently republican to satisfy the most radical mind. You have fully complied with the conditions of the bond and are entitled to admission.

In conclusion, allow me to thank you, and the members of the Convention, for your kind attention to my remarks, and to wish you great success in your laudable efforts, to secure for yourselves and posterity all the rights guaranteed by the Federal Constitution.

Horrors of War in Missouri.

A St. Louis correspondent of the *Journal of Commerce* in a communication written in early winter, and before the late ravages and murders committed by Jennison and his Jay-hawkers in Jackson, Cass, Johnson and other counties in the upper part of Missouri, gives utterance to the following in relation to the operations of the civil war in that State:

"Doubtless no pen will ever describe these horrors in their full extent and terrible blackness. Thoughtful men prophesied before the war set in, awful scenes, without, probably, comprehending a tithe of the distress, woe, and horrors which were in store for our scourged people. If one will open the pages of Edmund Burke, and scan the picture he has painted of the war in the Carnatic, he will have a faint idea of the waste and ruin which have desolated so large a part of our afflicted State. Read anywhere the history of the civil broils which have in different ages and among different people, set neighbor against neighbor, and given a field of employment for the robbers and ravagers of property, and the assassins of reputation and life—which have covered almost every square league of territory with hostile camps—which have spilt the blood of citizens in battle or in murder—which have carried terror over whole districts and into the bosoms of innumerable homes—which have set brother against brother, father against son, in mortal strife—and a faint idea may be gathered of the dreadful condition to which Missouri is this day reduced. Her own children embroil their hands in each others' blood, and fire each others' dwellings; while enemies from without, who come in panting to glut a revenge which is insatiable, rejoicingly assist in the devilish work, and add to its horrors and abominations. To-day a Union leader, as was Cook in the western part of the State recently, will be seized and his life taken on the spot; to-morrow a judge of one of the courts, who sympathized with the South, will be murdered while a close prisoner in the hands of the head of an armed force, who has sworn to protect him, but cannot make good his cause, and the case seems almost hopeless. There is no balm in Gilead, and no physician there. Missouri has within her borders no men who can, as Missourians, stand up, and facing those dreadful exigencies, tell her people how they could be met, and what is the remedy. There is a mutual hate and distrust. No man believes another honest in any course of pacification that either may recommend. Men are prone to think and believe the worst of each other. It is a time when every private enemy can gratify his revenges, for there is nothing that malice can invent which will not be credited by one man of any other man who even so much as differs in opinion from him. At such a time, this distressed and harassed people ought to welcome, even from without, any administration which promises to govern with a wisdom adequate to the emergency."

FOUR GOOD HABITS.—There are four habits a wise man recommends to be essentially necessary for the management of temporal concerns; and these were punctuality, accuracy, steadiness and dispatch. With out the first of these, time is wasted; without the second, mistakes most hurtful to our own credit and interest, and that of others, may be committed; without the third, nothing can be well done; and without the fourth, opportunities of great advantages are lost which it is impossible to recall.

—Isaac Jones, of Sheffield, Mass., although 102 years old, supports himself by sawing wood at the rate of about half a cord per day. He is so deaf that he has not heard thunder for twenty years.