Memorial of Certain Lawyers.

The following is copied from the *Congressional Globe* of Feb. 5, being the report of a portion of the proceedings in the House of Representatives the day preceding. The *Globe* being the official record of Congress, the document cannot well be denied by the signers—

UTAH.

Mr. MERRITT. I ask unanimous consent that the memorial I hold in my hand be printed in the *Globe*.

There was no objection, and it was ordered accordingly.

The memorial is as follows:

Utah—Its Territorial Policy and its Relation to the Federal Government.

The condition of Utah is exceptional from that of all the other Territories, and therefore requires special and exceptional legislation. This truth is made manifest by the course of legislation by the Territory, and the present condition of confusion, disorder, and anarchy existing in the Territory consequent upon the long-continued and hitherto unchecked abuse of the legislative power.

A reference to the record will establish these propositions:

1. From the very beginning the legislation of Utah has been inimical to and subversive of the Federal authority within the Territory.

2. The Territorial Legislature has resorted to every device short of open rebellion to deprive the Governor and judges appointed by and representing the Federal Government of all power and authority within the Territory.

3. It has purposely neglected for twenty-one years to pass and establish a wholesome, general system of laws necessary to the welfare of a civilized community; but, on the contrary, has, in terms and practice, cantoned out the legislative authority to municipal corporations—and so spread and extended are these corporations that they include almost all the settled lands in the Territory—and invested them, by elaborate charters, with the most absolute and monstrous powers for oppression and tyranny.

4. It has, in terms, divested of their jurisdiction and power the courts of general jurisdiction, whose judges are appointed by the Federal Government, and assumed to parcel out that jurisdiction to local and inferior courts, filled by local appointments or election, which inferior courts it has exalted and made, not only co-ordinate with, but independent of the former.

5. It has assumed to grant and parcel out to a few favorites the timber in the mountains and kanyons, and also the usufruct and control of streams of running water in the Territory, rendering the body of the people dependent therefor on them.

6. Instead of providing for and building up common schools for education, it has provided and devoted escheats and confiscations for the use of a church, and to bring hither its converts from Europe by taking property in utter disregard of all rights of heirs and creditors.

7. It has provided extraordinary and arbitrary rules, whereby the citizen has been deprived of his property without due process of law.

8. The municipal governments established by it, and spread over the habitable parts of the Territory, have established and put in force elaborate codes of laws, mostly uniform, but most oppressive, vexatious and arbitrary in their nature, and far more so in their execution by means of tribunals unauthorized by law.

As a natural consequence of these long continued and unchecked abuses, the following evils afflict Utah to-day, and will continue until the appropriate remedy is applied by Congress:

1. Two hostile jurisdictions; one by courts deriving their authority from the organic act, and the other from unwarranted local legislation repugnant to that act; both assuming and exercising unlimited general jurisdiction at law, as well as in equity, criminal as well as civil, whereby the administration of the law has fallen into utter disorder and confusion, in which a violent collision is liable to occur at any time.

2. Two systems of law; one enacted by the Governor and Legislative Assembly, very meagre and wholly inadequate to the exigencies of a civilized community, and consisting for the most part of charters, franchises, grants of special and exclusive privilege, and acts providing agencies and means for enforcing the other, which consists in the codes adopted by the numerous municipal corporations which are made to cover the territory like a piece-quilt.

3. A set of territorial officers who acquire and hold their offices in a manner contrary to the provisions of the organic act, and are wholly subservient to the local and inferior courts.

These are grave charges, and now for the proofs:

SPECIFICATIONS.

To sustain the first and second propositions of the above statement, reference is made to the following acts of the Territorial Legislature:

"An act in relation to the judiciary," passed January 19, 1855, page 29 of the General Laws of Utah.

This act by its first section gives to the district courts, presided over by Federal appointees, such jurisdiction in civil and criminal cases only as is not otherwise provided for.

The same act (section twenty-nine) provides that the probate courts, which are presided over by persons elected by the vote of the Territorial Legislature, shall "have power to exercise original jurisdiction, both civil and criminal, and as well in chancery as at common law, when not prohibited by legislative enactment."

The attempt, therefore, to abstract the rightful jurisdiction from the courts instituted and filled by the Federal authority, and to transfer it from the tribunal charged with it by the organic act to those of local character, is too plain for argument.

This act provides by its first section "that all the courts of this Territory shall have law and equity jurisdiction in civil cases, and the mode of proceedings shall be uniform in all of said courts."

By this act it will be seen that not only are the probate courts given powers which the supreme court of the Territory has again and again denied can be conferred, but even justices of the peace have unlimited jurisdiction in equity.

When it is explained that in addition to the different tribunals which are authorized by the organic act (section nine, organic act) the Legislature has organized a "county court," (page 206 of the General Laws of Utah,) also a mayor's and aldermen's courts, (see charter of Great Salt Lake and other cities,) the enormity of this grant to these petty courts may be appreciated.

The last section of the act first referred to provides (pages 31 and 32, General Laws) "that any matter involving litigation may be referred to arbitrators or referees selected by the court or the parties," and upon a hearing before such tribunal it is required to decide the matter, and file its judgment, which is to be entered and have the same effect as if given by the court.

The right to a hearing by a judicial tribunal is thus denied, and the right of trial by jury abolished unless the court see fit to grant it.

The repugnance of this legislation, not only to the organic act, but to the principles of common right, we submit has no parallel in the legislative history of any other country.

The Supreme Court of the United States having recently, in the case of Clinton *vs.* Englebrecht, affirmed the binding force and validity of the present jury law of this Territory, especial attention is called to the complications and burdensome provisions of this law. Without entering into an elaborate detail of its objectionable features, we will simply state that the Mormon element have the exclusive control of the selection of jurors in our courts of general jurisdiction, and that for the improper exercise of this control, for the prejudices and partialities of the element aforesaid against other portions of the people of said Territory, there is no remedy or redress whatever.

Furthermore, it is our conviction that under the present system, carried out with the purest motives and best intentions, the machinery (so to speak) of the system is so complicated, and in different parts has to be worked by so many different persons, that to obtain a jury panel in any case not justly subject to challenge will be very difficult; that in a great majority of cases such challenge could be properly interposed for defects occurring in simply carrying out or attempting to carry out the provisions of the law.

And this being so, the right of trial by jury in this Territory is in effect denied, and criminals go unpunished and the rights of the people unprotected.

Reference is also made to page 33, section four of an act in relation to justices of the peace. By this section such courts are permitted to "decide cases without process" when the amount claimed is less than $100, and by section thirteen, same page, it is provided "that when the amount exceeds $100, the justice shall have the same powers as other courts of arbitration, and shall have power to enforce his decison thereon, which decision shall be an end of the controversy."

Such monstrous provisions need no comment for their condemnation.

By the act of 1870 some portions of the acts referred to are repealed, but the proposition that the general system of legislation in Utah has been subversive of the authority of the Federal Government is not affected by this fact.

We submit further that in providing for the filling of offices of territorial marshal, (Laws of Utah, page 38,) territorial attorney general, (page 38,) territorial auditor, (page 75,) territorial treasurer, (page 77,) territorial school superintendent, (page 221,) territorial surveyor general (page 77,) territorial wardens of penitentiary, (page 96,) territorial directors of penitentiary, (page 96,) territorial notaries public, (page 214,) by the joint vote of the Legislative Assembly, is a deliberate violation of the seventh section of the organic act, which provides that all such officers shall be appointed by the Governor, by and with the advice and consent of the territorial council.

We also submit that the act of February 12, 1870, prostitutes the right of suffrage by conferring it on an alien woman without even qualification of time of residence, but on the sole condition that she become what is termed the "wife" of a "citizen," without any limit to the capacity of such "citizen," for this new process of naturalization. When it is remembered that most of these women, by assuming domestic relations which are in violation of the laws of Congress, could not become citizens by naturalization in the courts, the purpose of this summary process of making legal voters of them is apparent.

In support of the third, fourth and eighth propositions we advert to the absence of any statute of frauds, of registration, of inheritance or marriage. Such an omission cannot simply be an oversight, but must have been intentional and deliberate. We submit that the ordinary exigencies of a civilized community demand legislation upon these subjects.

About four fifths of the legislation of the Territory during its existence for twenty-one years is made up of charters to local municipalities and grants of special privileges to individuals, as will be seen by reference to the volume containing the general laws, from which we have quoted.

We refer to the following: Parowan city, 25 square miles; Millard city, 36 square miles; Tooele city, 9 square miles; St. George city, 25 square miles; Beaver city, 36 square miles; Fillmore city, 36 square miles; Grantsville city, 18 square miles; Coalville city, 20 square miles; Deseret city, 36 square miles; Smithfield city, 16 square miles; Franklin city, 18 square miles; Hyrum city, 9 square miles; Mendon city, 9 square miles; Willard city, 6 square miles; Washington city, 20 square miles; Cedar city, 36 square miles; Lehi city, about 16 square miles; American Fork, about 16 square miles; Pleasant Grove, about 40 square miles; Provo Grove, about 25 square miles; Springville Grove, about 25 square miles; Spanish Fork, about 30 square miles; Payson Fork, about 25 square miles; Manti Fork, about 16 square miles; Salt Lake Fork, about 7 square miles; Nephi Fork, about 16 square miles; Alpine Fork, about 4 square miles; Ogden Fork about 20 square miles; Logan Fork, about 16 square miles; Wellsville Fork, about 16 square miles; Moroni Fork, about 40 square miles; Brigham Fork, about 12 square miles; Richmond Fork, about 16 square miles; Kaysville Fork, about 18 square miles; Ephraim Fork, about 12 square miles; Mount Pleasant, 16 square miles; Spring Fork, 16 square miles.

Exact figures are given when possible. In other cases natural objects, and not distances are given for bounds, but the aggregate is probably far greater than here stated. To show how comprehensive the plan is, it may be mentioned that in going south the traveler enters the corporate limits of Lehi when he enters Utah county, and from that into American Fork, and so on into Pleasant Grove, Provo, Springville, Spanish Fork, Payson, &c., passing out of one only to enter another, so that through the length of the county he is within corporate limits, though for much of the distance he is miles from any habitation, and for the entire distance of three or four hundred miles south to St. George, as a general rule, he is within the limits of a corporation when he is not on the desert.

The next step in this process was to canton out the legislative power to this system of municipalities, which was done in the various charters, and their numerous local legislatures proceeded under them to establish and put in force an elaborate system of laws, which are still kept in operation.

A reference to such charters will indicate what enormous powers have been assumed and exercised under them, so comprehensive in fact that the Legislature has never found it expedient to pass any law in reference to the crime of assault and battery, and many other subjects of general laws. Thus the legislative power which was by the organic act (section four) delegated exclusively to the Governor and Legislative Assembly, with a provision for the submission of all laws to Congress, (section six) has been redelegated to these irresponsible bodies without any check or participation by the Governor, or any means for their submission to Congress.

The next and final step in this process of independence was to provide judicial machinery for putting into operation this system of local codes, without any check or control by appeal or otherwise, by the courts of general jurisdiction provided by Congress and filled by Federal appointment. The entire judicial power of the Territory is by the organic act (section nine) vested in four grades of courts, namely: a supreme court, district courts, probate courts, and justices of the peace. But by these charters mayors' and aldermen's courts are created, and the judicial power cantoned out to them, with justices of the peace to put in force their separate machinery, and appeals from them are only allowed to the probate courts, which, as has been seen, are invested for this and all other purposes with appellate as well as general original jurisdiction, criminal as well as civil, in chancery as well as at law, to the exclusion of the district courts. By these means there have been established and vigorously maintained in Utah an independent system of laws and an independent judiciary, to which all the local authorities and local ministerial officers are wholly subservient; among whom are those invested with the power to select and summon all jurors, grand as well as petit, for the administration of territorial laws in the district courts. Hence, the administration of justice has fallen into utter disorder and confusion.

Persons accused of crimes and committed to custody by the district courts or judges are discharged on *habeas corpus* by the probate judges. The probate courts, assuming as law that all acts purporting to confer jurisdiction upon them not disapproved by Congress are approved by Congress, are exercising all over the Territory unlimited jurisdiction, original and appellate, criminal as well as civil, in chancery as well as at law, which these various acts assume to confer. In them equity is blended with remedies at law in one and the same case; grand juries are impaneled, indictments found and tried for every grade of crime. In some cases prisoners under accusation or trial upon such indictments, have been discharged or held to answer, as the showing required, before district courts by district judges on *habeas corpus*. And in all this confusion, though often decided, no question is determined, but everything is moving on in the full tide of disorder, toward a violent collision which must result if Congress fails to interpose by appropriate legislation.

As relates to the fifth proposition, the various acts granting to legislative favorites "exclusive control" of streams of water, upon which large settlements depend for irrigation and other uses, and of timber, and the kanyons by which access to timber is had, are too numerous to be specified here; but in addition to all these special grants, there is a general provision to effect exclusive control of all other timber, waterpower, and streams in the Territory, provided in the seventh section of an act creating the office of selectmen and county courts, and defining their powers and duties, page 206, sections seven, eight, and nine, which grants to the county courts the "control of all timber, water privileges, or any water course, or creek, to grant mill sites, and exercise such powers as in their judgment shall best preserve the timber, and subserve the interests of the settlements in the distribution of water for irrigation or other purposes. Grants or rights held under legislative authority shall not be interfered with." Thus the special grants which include the most important streams and most accessible timber are made absolute and free from all interference, and all the rest is committed to the discretion of the county courts. If any one should be surprised at the extent of the assumtion, and doubt the power to enforce it, with all the machinery and local forms of government acting as a unit, let him consult the actual events in Utah.

Among the anomalies of legislation, reference is made in support of the seventh proposition to the following act, which is here copied, that no one may suspect that injustice is done by construction of it namely, page 50:

"CHAPTER XXI.—An act providing for the management of certain property.

"Section 1.—*Be it enacted by the Governor and Legislative Assembly of the Territory of Utah*, That the probate judge in each county is empowered and required to take possession of all property left by any deceased or abscondent person, when there is no legal claimant known or sufficiently near to see to it in season; and shall forthwith appraise and make two lists of said property, and keep one on file and furnish one to the treasurer of the perpetual emigrating fund.

"Sec. 2.—It is hereby made the duty of every person having such property in his possession, or knowing it to be in the possession of any other person, to report the property forthwith, and the name of the person in possession thereof, to the probate judge of the county where said possessor is at the time; and said judge shall take possession of such property as soon as practicable, and proceed therewith as required above.

"Sec. 3.—At the earliest practicable date the probate judge shall place said property, or the avails thereof, in the possession of said fund, the value thereof to remain there until proven away by a legal claimant, when said judge shall give an order therefor on the treasurer of the fund.

"Sec. 4.—A failure to comply with the requisitions of this act may be punished by costs, damages, and fine, adjudged by any court having jurisdiction.

"Approved January 20, 1854."

It matters not by what means a party may die, or what dependent family or just creditors he may have, or by what pressure he became an "abscondent," the probate judge is authorized to seize the property "left," appraise it at his own discretion, sell it at his own price, and "at the earliest practicable date" place the same or its avails "in possession of" a "fund," not a public officer under official bonds; and when "proved away by a legal claimant" his remedy ends by getting an order on a "man in buckram." The statute of limitations, approved February 16, 1872, under one construction of it will, if not disapproved by Congress before February 16, 1873, bar thenceforth all remedies for wrongs of this class, as well as many others which have occurred more than three years prior to that time.

In support of the eighth proposition we would say that justices of the peace, by the act referred to, (sec. 15, page 33,) are empowered to enforce arbitrations when the amount in controversy exceeds $100, and their decisions are made final.

The mayors of corporations are authorized to exercise the right of eminent domain (an attribute of sovereignty) by taking private property for public uses anywhere within their corporations without any check to oppression. (See charters Salt Lake, Provo, etc.) The by-laws and ordinances of these cities authorize the seizure and destruction of the property of the citizens. The case