A History of the Federal and Territorial Court Conflicts in Utah, 1851-1874

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A HISTORY OF THE FEDERAL AND TERRITORIAL COURT
CONFLICTS IN UTAH, 1851-1874

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INTRODUCTION

Statement of Problem

In studying the history of Utah, a student cannot help but realize the importance of the role of the judiciary in the early history of Utah. Perhaps no other state in the Union has had a more interesting judicial history than has the State of Utah. During the exodus of the early Mormon pioneers from Illinois to Utah, they operated their judicial system ecclesiastically, for after leaving Illinois, the Church courts became the main type of judiciary for the Mormon refugees until 1849.

During the two years following their arrival, the Mormons were too involved in survival to establish a civil government, and therefore administered justice with the Church High Council and Bishops' courts. On March 12, 1849, the State of Deseret was organized due to the need for instituting a civil government in place of the previous Theo-democracy. Deseret, during her two short years, enjoyed a very interesting judicial career which ended in her attempt to gain statehood. Deseret failed in this attempt to gain statehood, and Congress voted to reduce the proposed boundaries of Deseret and created the Territory of Utah.

After Utah was made a territory, some Federal officials were sent to Utah to officiate, and others were appointed from among the Mormons. These officers were not to last long for on
September 28, 1851, three of the highest officials deserted their posts, two of whom were Supreme Court Justices. Due to their desertion, a great judicial burden was placed on the sole remaining Justice, Zerubbabel Snow. To help relieve the burden, the Territorial Legislature, on February 4, 1852, passed an act which gave the probate courts of the territory original jurisdiction, criminal and civil. This piece of legislation was to be the source of much trouble for the next twenty-two years. As new Federal justices were appointed to Utah, they would lash out against the excessive jurisdiction of the probate courts. In some respects, the jurisdiction of the probate courts was equal to that of the Federal judges in their District courts. The power of the probate courts was to be, in part, the cause of Associate Justice Drummond's bitterness toward the people of Utah and the indirect cause of the military expedition to Utah in 1857.

From 1858 to 1874, Utah faced many hostile justices, until the time of Chief Justice McKean, who was one of the most hostile toward the probate courts. The end of the probate courts and territorial jurisdiction came on June 23, 1874, when Congress passed the Poland Laws which abolished the jurisdiction of the Territorial courts and legal authorities such as the Territorial marshal and Attorney-general. These laws returned the probate courts to their original status, that of being administrators of wills and estates.

It is the writer's intent to show the conflict that arose during this period and also to show that not enough recog-
nition is given to the importance of the conflicts between the Federal and Territorial authorities for the jurisdiction in Territorial affairs. It is the writer's feeling that polygamy is sometimes overly emphasized during this period and that not enough emphasis is placed on an equally great conflict, the courts.

Present Status

In the history of Utah, there has been no extensive history written on the Utah court system. It has been the writer's experience, in research on this problem, to find that only one book has been written on this subject, which is called the "History of the Bench and Bar of Utah,"¹ and this is poorly documented. It was written more as a biography of the Utah Bar members at the time of its publication than as an accurate historical account of the Utah Bench. Tullidge, in his histories, deals with the courts, but is incomplete in many respects. It was found that the more modern writers are not complete and do not elaborate in any great detail on the court problem. It was in taking a legal history class at the University of Utah Law School that the writer realized just how little has been done in a written history of the Utah courts. It is for this reason that the writer has undertaken to write a small phase of the history of these courts.

¹History of the Bench and Bar of Utah (Salt Lake City, Utah: Interstate Press Association, 1913)
Basic Source of Information

For the basic sources, the writer has mainly used primary sources which include journals and diaries of early inhabitants of Utah, the Journal History of the Church of Jesus Christ of Latter-day Saints, Government publications and documents, Ordinances and Statutes of the State of Deseret and the Territory of Utah, newspapers, magazines, writings contemporary to the period of this study, and modern day writings. For a complete listing of primary and secondary sources, refer to the bibliography.
CHAPTER I

BACKGROUND OF MORMON COURT SYSTEM

To understand fully Utah's early court system and its problems, one must become familiar with the beginnings of Mormonism before it came west. These beginnings reveal certain practices which were to affect the progress of the courts in Utah.

It was on April the sixth of 1830 that the Church of Jesus Christ of Latter-day Saints (Mormons) was organized at Fayette, New York, with a total membership of six. The Church grew rapidly due to vigorous proselyting. In January of 1831, just nine months after its organization, the leaders moved the Church to Ohio. Upon their arrival in Kirtland, Edward Partridge was called on February 4th, 1831, by a purported revelation given to Joseph Smith, to hold the first office of bishop to be created in the Church.¹ One of the duties of the bishop was to be present at trials of members who failed to keep the commandments of the Church.² Prior to this time it had been the Elders (then

¹The Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints (Salt Lake City, Utah: The Church of Jesus Christ of Latter-day Saints, 1948), Section 41:9. Hereafter referred to as the Doctrine and Covenants by section and verse.

²Ibid., Sec. 42:81-82.
the highest office of the priesthood) who had dealt with the disobedient members of the Church through their Elder's court.

After the appointment of Bishop Partridge, the Elders continued to function as a Church tribunal. It is not known exactly when the Elders ceased to function as a court, but there are records of their trying cases as late as December 26, 1833, in which trials two members were excommunicated from the Church for transgressions.¹ In a purported revelation of Joseph Smith on August 1, 1831, Elder Partridge was further instructed in a bishop's responsibilities as a "judge in Israel."

And to judge his people by the testimony of the just, and by the assistance of his counselors according to the laws of the kingdom which are given by the prophet of God.²

As the Church grew, bishops were added, for on December 4, 1831, Newel K. Whitney was called to be the second bishop in the Church, and as such presided over the Church in Kirtland while Edward Partridge presided in Missouri.

It was on June 3, 1831, that a new office was added to the Priesthood, that of High Priest. From this office came a group known as the Council of High Priests which was composed of twelve High Priests and sometimes more, and which acted on matters of the Church, thus sitting as a court to settle difficulties that would arise. This group in some respects was similar to the High Council that had not yet been organized.³

¹Joseph Smith, History of the Church (Salt Lake City, Utah: Church of Jesus Christ of Latter-day Saints, 1912), II, p. 133.
²Doctrine and Covenants, 58:18.
On February 17, 1834, the first High Council was organized at Kirtland, after which the council of high priests was discontinued. It was the purpose of this new body to act as an appeal court, or as Joseph Smith states, "for the settling of important difficulties which arise in the Church, which could not be settled in the Church of Bishop's council to the satisfaction of the parties." A short time after the organization of the high council in Kirtland, the high priests of Missouri assembled on July 3, 1834, and organized a high council in Missouri like that in Kirtland. It was this high council in Missouri that excommunicated W. W. Phelps and John Whitmer from the Church on March 10, 1837.

In 1839, after suffering many persecutions in Ohio and Missouri, the Mormons found a new place to settle, this being Commerce, Illinois, later known as Nauvoo. During their stay in Nauvoo, several stakes were organized in Illinois, each of which probably had a high council. According to the records, during the Mormons' stay in Nauvoo, the high council there tried cases dealing with civil and ecclesiastical matters. Joseph Smith in his personal account of Church history tells of attend-


2Smith, II, p. 28.

3New stakes in Illinois were at Commerce (Nauvoo), Quincy, Line, Columbus, Geneve and Springfield, with one in Iowa. Joseph Fielding Smith, Essentials of Church History (Salt Lake City, Utah: Deseret News Company, 1947), p. 268.
ing a case on February 19, 1842, of an equitable nature. He wrote:

Spent the day from nine in the morning till midnight, in the High Council, who were attending to the case of Wilson Law and Vriel C. Nickerson, who were in dispute about the title to certain land on the Island. After hearing the testimony, I explained the laws of the United States, Iowa, and Illinois, and showed that Nickerson had the oldest claim and best right, and left it for Law to say how much Nickerson should have; and the parties shook hands as a token of settlement of all difficulties.¹

It was also this same council that sat in on the contracts case of Graham Coltrin vs Anson Mathews.

While the Mormons were being persecuted in Ohio and Missouri, and while moving into Illinois, the Church courts came to be similar to those of today. Roberts lists them as follows:

The judicial powers of the Church in the ordinary bishops courts, the standing high council of the stakes of Zion, temporary council of high priest abroad, the traveling presiding high council, which is also the quorum of twelve apostles, and special court consisting of the presiding bishop of the Church and twelve high priests ... and finally in the presidency of the Church.²

In this system, the bishop's court is the lowest, if there can be no reconciliation there, a case is appealed to the high council which is presided over by the stake presidency. When it is brought before the high council, it divides in half, after drawing numbers, the even standing for the accused and the odds for the accuser.³ In case there is no satisfaction here,

¹Joseph Smith, V, p. 280.
³Doctrine and Covenants, 102:17.
CHURCH COURT SYSTEM

SPECIAL COURT
Presiding Bishop
Twelve High Priests
(No Appeal)
For trying the Higher Priesthood

FIRST PRESIDENCY
FINAL APPEAL

Temporary High Council Abroad
Twelve High Priests
Appeal to First Presidency

High Council Stake Presidency
High Council
Appeal Court

Traveling High Council
12 Apostles Abroad
Called by First Presidency
(NO APPEAL)

BISHOP'S COURT
the case can be appealed to the first presidency from whose decision there is no appeal. The other courts consist of the traveling high council which is composed of the twelve apostles. The twelve apostles labor under the direction of the first presidency, regulating the affairs throughout the world; and from their decisions abroad, there is no appeal. There can be a temporary high council abroad which is made up of twelve local high priests from which an unsatisfactory decision can be appealed to the first presidency. The question may arise concerning who tries the general authorities. This is taken care of by the special court which consists of the presiding bishop and twelve high priests especially called for the occasion. From this decision, there is no appeal.

The Mormons' stay in Illinois was of short duration for on February 4, 1846, the first of the Nauvoo exiles were driven from their homes once again. They crossed the Mississippi and Iowa to their temporary shelter at Winter Quarters, and Council Bluffs. Before the winter of 1846 set in, several high councils had been organized in Winter Quarters, Pisgah, Garden Grove, Kanesville (Council Bluffs), Council Point and also Bishop Miller's camp on Running Water River, or wherever there was a concentration of wards.

At this time Iowa was seeking statehood, which was granted on December 26, 1846. During this time, the high councils in the

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1 Wayne Stout states: "That under such an air tight system, no miscarriage of justice was ever known." Wayne Stout, Hosea Stout, Utah's Pioneer Statesman (Salt Lake City, Utah: Wayne Stout, 1953), p. 133.
above named places "were authorized to exercise the functions of both an ecclesiastical high council and a municipal council." This would explain why at this time the high council was fining members for wresting their cattle from the stray pen, and was taking on contract cases. One type of penalty that was being meted out at this time and that was carried on in Utah was that of whipping, for Hosea Stout records that two young men were whipped in Iowa for immoral conduct.

Prior to this time, the Church's belief had been that the punishment which was within the power of the Church to inflict was merely that of disfellowshipping and excommunicating offenders. Perhaps the reader will ask then, why did the Church take upon itself to impose fines and punishment of a civil nature? This can be answered by the following reasons. First, Iowa was a new territory, on what was then the frontier, "for the land offices were not opened and land offered for sale until 1838." This was the same year that Iowa was organized into a territory. Some eight years later when the Mormons arrived,

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1 Roberts, III, p. 149.


3 Ibid., III, 380-384.


5 Doctrine and Covenants, 134:10-11.

Iowa was ready for statehood. One reason for the Mormons themselves enforcing the laws may have been that the Territorial marshals and judges were preoccupied in the attempt to gain statehood. A second possible reason is that the Mormons knew they were only going to be in this place temporarily; and rather than seeking civil officers or establishing some sort of civil government, they let the already organized church courts handle any problems that might arise, civil or ecclesiastical.

The Mormons remained on the Missouri during the winter of 1846-1847. On April 14, 1847, Brigham Young and the first of the emigrants moved out for Salt Lake Valley. Although many of the members moved out in 1847, many still remained behind; and it is evident that the Church courts functioned in Iowa through the winter of 1847-1848, for Hosea Stout records trying one of the members for stealing a horse.\(^1\) As late as 1851 cases were still being tried to a lesser degree, for James C. Snow was appointed traveling agent for the high council in Iowa to settle all disputes in the branches of civil and ecclesiastical matters.\(^2\)

The Mormon courts were unique, then as now, in that they were able to meet and handle any situation that was laid before them, whether civil or ecclesiastical. It is perhaps fortunate that the Church had such a fine functioning court system in its

\(^1\)Hosea Stout, III, 90.

\(^2\)Journal History of the Church. A day by day loose-leaf manuscript of the Church of Jesus Christ of Latter-day Saints, from its organization to the present. Church Historians Office, Salt Lake City, Utah, October 9, 1869. Hereafter referred to as the "Journal History" by date.
days of suffering and persecution, for through these courts, order and discipline were maintained in the greatest hours of trial. The Mormons, as they moved across the plains to the Great Salt Lake Valley, carried their court system with them, for disobedient members had to be dealt with on the plains. After the arrival of the Mormons in the valley, the Church courts were to be the main judicial body for almost two years. Much may be said for and against such a court system; but as will be seen, they were to be sufficient until the settlers were able to provide a civil type of government.
CHAPTER II

MORMON THEOCRATIC COURTS 1847-1849

It was on July 24, 1847, that the first Mormon wagon train completed its journey to the Salt Lake Valley, which was then in Mexican territory, where they were to establish a new headquarters for their "Zion." Their hope was to establish a permanent resting place from persecution in this uninhabited land and to form their own government to insure this desire. Upon their arrival, under the leadership of Brigham Young, they explored and picked the best site for establishing a city. Since Brigham Young was going to return to Winter Quarters, it was necessary to have some type of governing body in the valley to keep order among the Saints that would arrive later on. The reason for establishing this authority in the valley grew out of the fact that the Mormons had settled in an isolated section of the country where there were no laws, courts, or civilized government in force.

On August 22, four days prior to his departure for Winter Quarters, Brigham Young recommended that a president be appointed to preside over the settlement, with a high council. He proposed that, "if Uncle John Smith\(^1\) is in the next company, it was his

\(^1\)John Smith was the uncle of Joseph Smith, Jr.
desire that he preside,"\(^1\) with which proposal the congregation was in full accord. On September 5, while returning to Winter Quarters, Brigham Young's party met the west bound wagon train in which John Smith was a member. The following day, Brigham Young and eight of the apostles and officers of the camp nominated a stake presidency, a high council and a marshal to preside at Great Lake City.\(^2\) Three days after this meeting, Brigham Young and the members of the twelve addressed a letter to the Saints in Great Salt Lake City, naming the officers whom they thought should be set apart to govern till their return. In part it is as follows:

> It is wisdom that certain officers should exist among you, to preside during our absence, and we would nominate John Smith to be your president, with liberty for him to select his two counselors, and we would suggest the names of Charles C. Rich and John Young. We would nominate Henry G. Sherwood, Thomas Grover, Levi Jackman, John Murdock, Daniel Spencer, Steven Abbott, Ira Eldridge, Edison Whipple, Shadrack Roundy, John Vance, Willard Snow and Abraham O. Smooth for a High Council; whose duty it will be to observe those principles which have been instituted in the stakes of Zion for the government of the church, and to pass such laws and ordinances as shall be necessary for the peace and prosperity of the city for the time being.\(^3\)

John Smith arrived in Salt Lake City on September 25, and on October the third, at a Church conference, the proposed list of officers and James Van Cott as marshal were sustained by the people of the valley as the governing head. Thus the "church


\(^2\)Journal History, September 6, 1847.

\(^3\)Ibid., September 9, 1847.
developed as a theocracy, tempered by the traditions of the democratic soil from which it grew.\textsuperscript{1}

There is some dispute as to who was actually in charge in the valley for John Nebeker, in his account of early Utah, states: "Father John Smith was looked on as president of the camp; but [John] Taylor and [Parley P.] Pratt took the lead and in fact were in charge."\textsuperscript{2} This fact may be disputed, for another source states:

Nevertheless, the High Council retained its authority in the valley, as was instanced on November 17, 1847, when the High Council decided against John Taylor in a dispute with Peregrine Sessions over the ownership of a horse, for Taylor had no recourse except to say that he would appeal to the Quorum of the Twelve.\textsuperscript{3}

Although there may have been some members of the Twelve Apostles who felt that they were beyond the power of the High Council, they were soon put to right when Brigham Young stated that the Twelve were subject to the authority of the Stake President and High Council, "and ought to serve every law and ordinance as much as any other member."\textsuperscript{4}

Soon after the organization of the High Council, committees were formed to handle governmental functions. The first of these was called on October 9, 1847, when "Henry G. Sherwood, Albert Carrington and Charles C. Rich were appointed a committee

\textsuperscript{1}Dale Morgan, "State of Deseret," \textit{Utah Historical Quarterly}, VIII (April-October, 1940), p. 70.


\textsuperscript{3}Journal History, November 7, 1847.

\textsuperscript{4}Ibid., February 16, 1849.
to draft laws for the government of the people in the valley."\(^1\) On October seventeenth, "Henry G. Sherwood, Shadrick Roundy and Albert Carrington were appointed . . . to hear and adjust claims in the Old Fort."\(^2\) On October eighteenth, John Young, Charles C. Rich and Daniel Spencer were appointed by the council to "receive the claims on the plowed land and adjust them."\(^3\)

During the last two months of 1847, the council was busy adopting some ordinances for the valley and trying cases. The most outstanding of the cases tried during this time was a divorce case;\(^4\) a case between Abner Blackburn and Lysander Woodward against Captain James Brown on a contract to furnish them beef, the decision being for the plaintiffs;\(^5\) and the last recorded case of any importance, another suit against James Brown by Elam Ludington for withholding Ludington's money from the Government, which was also decided in favor of the plaintiff.\(^6\)

As was stated, the High Council was busy adopting ordinances for the valley. On December 27, 1847, they adopted five ordinances, the first dealing with "Vagrants"; the second with "Disorderly or Dangerous Persons and Distrubers of the Peace"; the third with "Adultery and Fornication"; the fourth concerning the

\(^1\)Ibid., October 9, 1847.

\(^2\)Ibid., October 17, 1847.

\(^3\)Ibid., October 18, 1847.

\(^4\)Ibid., November 14, 1847.

\(^5\)Ibid., November 27, 1847.

\(^6\)Ibid., December 1, 1847.
"Destruction by fire of any property"; and the fifth on "Drunkness."\(^1\) On January 1, 1848, Robert Bliss records in his journal that a public meeting was called for the adopting of these new ordinances, "For the time being, or until the question is settled between the U. S. and Mexico and we know whose hands we shall fall into."\(^2\) On January 25, 1848, two additional laws were passed, one dealing with wood and fuel and the other with loose cattle.

Since there were no jails in the valley in which offenders could be incarcerated, the High Council had to find a means by which they could penalize offenders. There were about three ways open to them and these were whipping, doing manual labor or fines of a monetary value.\(^3\) In cases of theft, the persons accused were either fined four fold, or taken to the Bell Post,\(^4\) where they were tied and could receive up to thirty-nine lashes.

\(^1\)Ibid., December 27, 1847, see Appendix I.


\(^3\)Fines were enforced by the marshall in the following ways. "The authority of the Council, unquestioned by the great majority of the settlers, was enforced by the Marshal and delegated assistants. Fines in criminal cases were collected by confiscation and sale of property in the event the offender did not pay the fine of his own accord." Journal History, November 9, 1847.

A method was later evolved, in the case of Ira West and Thomas Burns, where the Marshal was instructed to offer their property for sale, or "that they be made to work until they have paid the fines now due from them. Ibid., November 9, 1849.

\(^4\)The "Bell Post," was a post in the center of town on which a bell was hung, for the purpose of calling the people together.
John Nebeker relates one case of a stolen lariat, where the person was fined ten dollars or ten lashes. He states, "I volunteered myself to help him pay the fine, but he would not so he was whipped." Nebeker also records that a man had to pay four fold for some biscuits his dog had stolen. Although whipping was frequently administered, Bancroft states, "that Brigham Young was decidedly opposed to whipping." Whipping at this time was not unique to the Mormons for the travelers of the plains, not having any courts, used this form of punishment for disobedient fellow travelers.

The latter part of 1848, the stray animal law gave the authorities in the valley no end of trouble, as it had in Iowa. Under this law all strays were impounded, and if the owner came to claim the animal or animals he was fined for any damage his...
strays might have caused, and a daily fee for the keep of the animals. An example of this is recorded by Hosea Stout, on October 19, 1848, when Bishop Lewis fined one animal owner five dollars for unlawfully taking his oxen. Two days later the law was secretly repealed and the judges were to decide the cases by justice rather than law.

By the beginning of the new year, 1849, Salt Lake City was divided into nineteen wards. Up to this time the wards that had been established had not fully developed their courts, for the High Council often sat in on the simpler cases of equity. During 1848, Salt Lake City and grown greatly in population, and the High Council sought to be relieved of some of its burdens. Creer states:

At a meeting of the High Council, January 6, 1849, it was resolved that the body should be relieved from Municipal duties. Such obligations were now intrusted to the bishops of the wards. The system of government by bishops is one of the unique features of the Mormon "Theo-Democracy." Before the regular incorporation of cities, these nineteen wards in which the city was divided in, this early developed like so many municipal corporations, over which the bishops presided as magistrates or mayors.

In this manner much of the work shifted to the bishops of the nineteen wards which were fully organized on February 22, 1849, giving the bishops a dual type of jurisdiction, which they retained even during the administration of the State of Deseret.

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1 Stout, IV, p. 274.
2 Ibid., p. 275.
The theocratic type of government was speedily coming to an end in early 1849, for it was to be superseded on March 12th of that year by the newly formed State of Deseret. This theocratic government had served its purpose well, for it had given the saints time to establish themselves, since "the activities in providing for economic wants precluded any immediate consideration of civil government."¹ It is possible that this type of government might have endured longer if the valley had remained exclusively Mormon. But due to the great surge of Gentiles² in the valley in 1848, it was felt that civil law and civil courts would take care of unorderly gentiles better than the Church laws and courts. It was mainly this reason that brought about on March 12th the State of Deseret.

¹Ibid., p. 59.
²Gentile was the name given by the Mormons to anyone who was not of their faith. All non-Mormons will be referred to as Gentiles.
CHAPTER III
THE STATE OF DESERET

In the history of the United States, only five states have made a spontaneous effort at self creation. These five were Franklin (Tennessee), Champoeg (Oregon), Deseret\(^1\) (Utah), Texas, and California. It is interesting to note that only two reached the ends desired. Texas is unique in that she gained statehood as a sovereign government after gaining her independence from Mexico. Of the remaining four, California was the only one to immediately achieve statehood. The other three have short histories. Franklin was suppressed two years after its beginning by North Carolina and Champoeg lasted only a short time. "Deseret failed to secure statehood largely because the fortunes of the Mormon commonwealth became involved in the national slave and free state expansion controversy."\(^2\)

The Need of Civil Authority

In the year 1848, two major American historical events occurred which were to have a great influence in the political

\(^1\)The word "Deseret" is found in the Book of Mormon in Ether 2:3, which is interpreted as meaning "Honey Bee."

lives of the Mormon settlers in the Great Basin. The two events were: the discovery of gold on January 24, 1848, at Sutter's Mill in California; and the signing of the treaty of Guadalupe Hidalgo on February 2, which brought the territory that now comprises Utah, Nevada, Arizona, New Mexico and California into the United States territory. Until these two events happened, the Salt Lake Valley was exclusively Mormon and the government of the church sufficed. The discovery of gold brought the gold seekers to California, a large number of whom passed through the Salt Lake Valley. The signing of the Treaty with Mexico brought the area inhabited by the Mormons under Federal control, which probably was an influence toward establishing a civil type government. By the end of 1848, the Mormon leaders were beginning to feel the pressure of the non-Mormons in their society and to realize the need for a civil type of government through which they could deal more effectively with the Gentile offenders. For as Bancroft states:

The Saints regarded their courts as divinely commissioned and inspired tribunals, but not so the gentile, by whom reports were freely circulated of what they termed lawless oppression of the Mormons. Thus it became advisable to establish for the benefit of all some judicial authority that could not be questioned by any, whether members of the church or not, and the authority must be one that, being recognized by the government of the United States, would have the support of its laws and the shield of its protection.¹

It would be a fallacy to state that the Gentiles were the only cause for the establishing of a civil government in the

¹Bancroft, p. 440.
valley. When the Mormons entered Utah, they did so knowing that they would not be able to live there in a vacuum, for they knew at the end of the Mexican War they would have to come to terms with either Mexico or the United States. On December 9, 1848, the "Council of YTFIF [fifty] met at the house of H.C. Kimball, and took into consideration the propriety of Petition [Ing] Congress for a Territorial Government."¹

On February 1, 1849, the leaders of the Church met to decide just what should be done in the way of organizing a civil form of government. On this date they sent out notice that a convention would be held in Great Salt Lake City on March 5, 1849, to organize a territorial or state form of government. On March 4th, the Council of Ytfif (fifty) met and voted "that an election be held on the 12th day of March in the City of Great Salt Lake."² On the fifth of March, "A considerable number of


²Ibid. It was voted that following should hold offices: "Pres, Brigham Young, Governor; Heber C. Kimball, Supreme Judge; Willard Richards, Secretary of State; Newel K. Whitney and John Taylor, Associate Justices; Horace S. Eldridge, Marshall; N.K. Whitney, Treasurer; ... Public Notice be given that on Monday, the 12th day of March, an election will be held in the fort." The Council of Fifty was organized on March 11, 1844, at Nauvoo, Illinois, under the leadership of Joseph Smith. This group was to provide the political government of what was believed to be the Kingdom of God and to prepare for the Millennium. Theoretically, under this government of the church and state were separated. This however was not entirely true, for the council was predominately composed of the leaders of the Mormon Church, although Gentiles could and did serve on the Council. The Council of Fifty exercised a great deal of authority in early Utah political affairs, and was responsible for the changing of the election date and also for the nominating of candidates.
the inhabitant of that portion east of upper California lying east of the Sierra Nevada Mountains met in convention in Great Salt Lake City. At this meeting, several men were appointed to draft a constitution which would be suitable for the governing of the Territory until the Congress of the United States would provide otherwise. From the eighth to the tenth of March, the convention met; and on the tenth, a constitution was finally adopted by the group for a territory that was immense in size, covering 490,000 square miles, which included the Great Basin and an outlet to the sea.


Journal History, March 5, 1849.

The men chosen to frame the constitution were: Albert Carrington, Joseph Heywood, William Phelps, David Fuller, John S. Fuller, Charles C. Rich, John Taylor, Parley P. Pratt, John Burnhisel, and Erastus Snow.

The boundaries of the State of Deseret as set up by the constitution are as follows:

Commencing at 33 degrees North Latitude where it crosses the 108 degree, Latitude, west of Greenwich; thence running south and west to the northern boundry of Mexico, thence west and down to the Main Channel of the Gila River, (or the Northern line of Mexico), and on the Northern boundry of Lower California to the Pacific Ocean; thence along the Coast North Westerly to the 118 degrees, 30 minutes of west Longitude; Thence North to where said line intersects the dividing ridge of the Sierra Nevada Mountains; Thence North along the Summit of the Sierra Nevada Mountains to the dividing range of the Mountains, that separate the waters flowing into the Columbia River, from the Waters running into the Great Basin; thence Easterly along the dividing range of Mountains that separate said waters flowing into the Columbia
constitution, an irregular election was held. It was irregular in that the Council of Fifty called it on March twelfth, while the convention had set the first Monday in May as the day for the election of new officers. The election was held in the Bowery, in which the following were elected by a unanimous vote of 674: Brigham Young, Governor; Willard Richards, Secretary of State; Heber C. Kimball, Chief Justice; Newel K. Whitney and John Taylor, Associate Justices; Horace S. Eldridge, Marshal; Daniel H. Wells, Attorney General; and Newel K. Whitney, Treasurer.¹ The bishops of the nineteen wards in Salt Lake and the outlying districts were elected magistrates over their respective wards.²

River on the North, from the waters flowing into the Great Basin on the South, to the summit of the Wind River chain of mountains; thence South East and South by the dividing range of Mountains that separate the waters flowing into the Gulf of Mexico, from the waters flowing into the Gulf of California, to the place of beginning; as set forth in a map drawn by Charles Preuss, and published by order of the Senate in the United States, in 1848. Dale Morgan, "State of Deseret," Utah Historical Quarterly, VIII (April-October, 1940), p. 156.

¹Journal History, March 12, 1849.

²Bishops of the nineteen wards in Salt Lake City were: David Fairbanks, first; John Lowery, second; Christopher Williams, third; Benjamin Brown, fourth; Thomas Winter, fifth; William Hickenlooper, sixth; William G. Perkins, seventh; Addison Everett, eighth; Seth Taft, ninth; David Pettigrew, tenth; John Lytle, eleventh; Benjamin Covey, twelfth; Edward Hunter, thirteenth; James Murdock, fourteenth; Abraham O. Smoot, fifteenth; Isaac Higbee, sixteenth; Joseph Heywood, seventeenth; Newel K. Whitney, eighteenth; and James Hendricks, nineteenth. Andrew Jenson, Encyclopedic History of the Church (Salt Lake City, Utah: Deseret Publishing Company, 1941), pp. 741-753.

The elected magistrates for the outlying district were: "Weber River District, James Brown; North Cottonwood, Joseph L. Robinson; North Mill Kanyon (sic), Orvil Cox; South Cottonwood,
In viewing the election, it is equally interesting to note the provision in the constitution which states:

The judges of the Supreme Court shall be elected by a joint vote of both houses of the General Assembly and shall hold their court at such time and place as the General Assembly shall direct, and hold their office for the term of four years, and until their successors are elected or qualified.

Contrary to the provisions of the constitution, the Supreme Court Justices were elected rather than appointed. The main reason for the election at this time was to have a functioning civil government for the coming year, so that its courts could handle the Gentile litigation that was then pending, and also that litigation which would come with the flood of gold seekers. It was probably felt at this time that it would be wise to elect the justices rather than to wait for the Legislature to be organized, for the Legislature did not meet in a general assembly until July the second of that year. The elected Supreme Court Justices held office only a short time, for on

William Crosby; Big Cottonwood, John Holliday; Mill Creek, Joel H. Johnson." Journal History, March 12, 1849.

The facts are not clear as to the election of the nineteen magistrates in Salt Lake City. The Journal History records that "no magistrate was elected for the Eighteenth Ward, which had not yet been organized and had no bishop." (Journal History, March 12, 1849) This seems to be in conflict with Jenson's Encyclopedic History, which states that the ward was organized in February, 1849, with Newel K. Whitney as Bishop. Hosea Stout records under that date that the nineteen bishops were elected. It is felt by the writer that Newel K. Whitney was not elected a magistrate, because he had been elected to hold two other offices which were Associate Justice to the Supreme Court and State Treasurer.

January 27, 1850, Daniel H. Wells, Daniel Spencer, and Orson Spencer were nominated and elected judges of the Supreme Court. Although the State of Deseret existed only two years, it enjoyed a very interesting career. It is especially interesting to examine the courts, for at times it is hard to tell whether they are ecclesiastical or civil.

The Bishop Magistrates

Theoretically, in the establishment of the State of Deseret, there was a separation of church and state, but in the first few months this was not always true. The people, being preponderantly Mormon, naturally chose those who led and conducted their religious activities in the valley as their political leaders. This is borne out by some of the eyewitnesses in the valley, who sometimes found it difficult to discern between the two. Stansbury states:

While there are all the external evidences of a government strictly temporal, it cannot be concealed that it is so intimately blended with the church that it would be impossible to separate the one from the other. This intimate connection of the church and state seems to pervade everything that is done. The supreme power in both being lodged in the hands of the same individuals, it is difficult to separate their two official character and to determine whether in any one instance they act as spirited or merely temporal officers.

1 Journal History, January 26, 1850.


One other eyewitness gives in a letter a description of the courts which seems to show that the ecclesiastical and civil were mixed.

"They are very strict in enforcing their penalties—punishing according to its enormity, making the thief return four fold, and pay so much into the public treasury by work-
Only a month after the formation of the State of Deseret, the First Presidency and the Quorum of the Twelve met as leaders of the Church and set Orin P. Rockwell apart for the Western Mission. In the same meeting they deliberated on the abduction of Orin P. Rockwell's daughter and while assembled "Judge Heber C. Kimball issued his first warrant to the marshal, for the arrest of the abductors, on a charge of kidnapping, and signed the document on his knee."¹ Such actions would naturally lead the Gentiles to believe that there was no real separation of Church and state.

During 1849, the court system was not fully organized and this left the bishops to handle the flood of litigation from the emigrants passing through as well as settling disputes among the valley residents. For some civil offenses the Mormons were still being dealt with in the Church courts; for example, the High Council on June 23, 1849, found one member of the Church guilty of taking advantage of the people in the sale of corn, as he was made to make full restitution.² A trial was also held on June 30, 1849, before Bishops Smoot, Perkins, and Hickenlooper, in which a member was found guilty of stealing

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¹ Journal History, April 11, 1849.
² Stout, IV, 313.
a pair of boots from an emigrant. He was ordered to pay back four fold and to pay fifty dollars on the territorial roads.\textsuperscript{1} As the legislature had not met or passed on any laws, it appears from the fine assessed in this theft case that the ordinances formed in 1847 were still in effect. These laws were apparently kept in force until January 16, 1851, when the legislature passed the criminal laws of Deseret.

The legislature first assembled on December 3, 1849, at which time they enacted only two ordinances for the newly organized state. On January 9, 1850, they passed an ordinance for the organization of the Judiciary. This ordinance provided for the Supreme Court, trial by jury, States Marshal, Attorney General, Prosecuting Attorney for each organized county, County Court, County Sheriffs and Justices of the Peace.\textsuperscript{2} Although there were no organized counties at this time, several were organized some three weeks later, on January 31, 1850, which brought about a more complete organization of the courts, thereby taking some of the litigation load off the previously elected justices of the various wards.

\textbf{The Gentile Observers}

During 1849, a group of government surveyors were present in the valley and in their writings they gave a better insight into the Mormon-Gentile legal relations during this period. The officers of the survey were Howard Stansbury and

\textsuperscript{1}Ibid., IV, 314.
\textsuperscript{2}Morgan, "State of Deseret," pp. 169-174. See Appendix III.
William Gunnison. They spent a considerable time in Salt Lake City, and had an opportunity to observe the courts in action. It was Stansbury himself who was brought before the courts twice and therefore had first hand experience with them.

Stansbury wrote:

...justice was equitably administered to "Saint" and "Gentile" ... Of the truth of this, as far at least as the Gentile was concerned, I soon had convincing proof, by finding, one fine morning, some twenty of our mule safely secured in the public pound, for trespass upon the cornfield of some pious saint; possession was recovered only by paying the fine imposed by the magistrate and amply remunerating the owner for damages done his crops.¹

It is interesting to note Stansbury's attitude toward this fine, since many of the Gentiles became enraged whenever they had to bail out their strays. Perhaps one reason he looked upon the courts with such favor, might be found in the fact of the courts not enforcing a judgement of $1,436.00 that was rendered against him in favor of Dr. Jos. Blake. The suit was non-suited twice after it had been awarded to Dr. Blake.² In the courts' dealings with the Gentiles, Gunnison wrote: "Many of these litigants applied to the Courts of Deseret for redress of grievances, and there was every appearance of impartiality and strict justice done to all parties."³

There have been many views expressed concerning the type of justice administered by the courts of Deseret, but one

¹Stansbury, p. 130.
²Stout, IV, 347.
could safely say that it was administered fairly insofar as the frontier conditions allowed it to be. Many of the derogatory accounts of the courts likely grew out of reports from litigants who were dissatisfied by what they may have felt was an unfair decision. Many Gentiles came in with the misconception that they were going to walk over the Mormons, of which Stansbury states:

Too many that passed through their settlement were disposed to disregard their claims to the land they occupied, to ridicule the municipal regulations of the city, and to trespass wantonly upon their rights. Such offenders were promptly arrested by the authorities, made to pay a severe fine, and in some instances were imprisoned or made to labour on public works, a punishment richly merited, and which would have been inflicted upon them in any civilized community.

Viewing this statement it would be reasonable to believe that such conflict between Mormons and Gentiles would result in derogatory accounts of the justice of the courts. In viewing the writings of these two eyewitnesses of the proceedings in the valley, one must conclude that though the fines were severe at times, justice was administered in a fair and impartial manner insofar as it was possible under such trying conditions.

Administration of Justice

During the coming year, 1850, there was once again a great surge of emigrants passing through the valley to California. These emigrants must have presented an extra-ordinary problem to the courts, for the courts were the source of continued appeals for the dividing of common property held by the emigrant

1Stansbury, p. 134.
companies. The majority of the emigrants, before leaving the states to come west, organized into companies, many of which held property in common. During the long route west a falling out often occurred, and many companies broke into small fragments before reaching their destination. Many of the emigrants were happy to reach Deseret, where they could have their property equitably divided. And many of the cases that reached the courts were of this nature. The Deseret News records:

Six other cases were brought before the same court, on the three following days by individuals emigrating to the mines; mostly about the division of property, and attendant causes of dispute natural to the hardship, losses and discouragements of traveling over the deserts and mountains. We had not had a court in Deseret for so long a time, previous to the arrival of the emigrants, that the scenery was quite a novelty to our citizens.\footnote{Deseret News, July 6, 1850.}

The courts during the remaining summer were kept busy with such cases, many of which caused them a great amount of trouble. Stansbury reports of a marshal being dispatched by the court over two hundred miles for some emigrants who had "stolen off with nearly the whole outfit of the party."\footnote{Stansbury, p. 131.} Hosea Stout records in his diary of several cases for the division of property and of assaults of one emigrant on another. One case that caused the court some trouble was that of the Glenn Company. In the division of common property, the marshal was sent to confiscate certain articles from some of the members of the company, but met with a force of resistance. Upon returning the second time, he confiscated the property and
arrested the resisters who were duly fined from fifty to one hundred dollars each. Thus, although the decisions were fair and just, there were those emigrants who would rebel against them and for such conduct were severely fined.

Another problem that came before the courts regularly was the recurrent one of strays. Although the original ordinance was repealed on October 31, 1848, before the organization of Deseret, it was once again enacted on April 28, 1849, by which there would be a fine of "one dollar for each offense together with damages and expenses." The property at that time was imperfectly fenced and therefore any loose animals would cause great damage to it especially gardens and crops. These strays were rounded up and taken to the stray pen in charge of a keeper. Many of the emigrants did not take this lightly and would try to recover their cattle by force. Hosea Stout records one such instance, where a Reverend Alvin Mussitt threatened the stray pen keeper and was fined ten dollars. On July 15, 1850, a notice to the emigrants appeared in the Deseret News.

Two gardens were destroyed on Tuesday night by emigrants' cattle which cost them $74.00. Our Marshal suggests that it would be wisdom for the emigrants to camp further from

1Stout, IV, p. 359. This is also found in the Deseret News, August 24, 1850.
2Gunnison, p. 64.
3Journal History, April 28, 1849.
4Stout, IV, p. 358.
the city, thereby saving their money and leaving the gar­
dens to grow.¹

Such great concern about trespassing cattle may seem strange to some, but it must be remembered that the Mormons had been in the valley only three years at this time and that their whole subsistance for the winter was tied up in their crops in their fields.

The courts were kept busy during 1850 and even during the winter of 1850-51 with litigation of Gentiles who had remained the winter in the valley. Some of these were known as "Winter Saints,"² since they had joined the church more for the convience of staying in the valley than for anything else.

The legislature was also busy at this time; word had reached the valley that Deseret had been made the Territory of Utah, and thereupon the legislature passed more laws than it had passed in the two preceding years. Of the new ordinances, three directly affected the courts: The first of these was passed January 6, 1851, and more fully organized the County Courts;³ the second, passed on January 16, concerned itself with the criminal law, and was much more complete⁴ than the

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¹Deseret News, July 15, 1850.

²Roberts, III, p. 343. Roberts in his writings gives the emigrant converts the name Winter Saints in that they were there only until they could be moving on to the mines in California.

³Journal History, January 6, 1851. See Appendix IV.

⁴Journal History, January 16, 1851. This ordinance included many more laws than the original five passed in 1848. It included a section on murders, which the ordinance of 1848 did not have. If there had been a murder prior to the passing of this ordinance, the courts would have had to decide it according to "Common Mountain Law" as they called it. See Appendix V.
previous ordinances of 1848; the third, passed on January 16, organized the Probate Courts, all of which were to carry over into the new Territory.

During 1849, after the formation of Deseret, delegates Almon Babbit and John Bernheisel had been sent to Washington to seek statehood. Stephen A. Douglas took up their plea, and presented it to the Senate on December 27, 1849. After much debate Deseret finally gained a territorial form of government under the Compromise of 1850, which was passed on September 9, 1850. With such slow communications at this time, news of the event did not reach the valley until January 27, 1851. The Legislature was formally dissolved on April 5, 1851, bringing to an end the State of Deseret. Although the state ended at this time, its courts and laws carried over in to the latter part of 1851, until new judges could be appointed and new laws enacted.

\[\text{Journal History, January 16, 1851. See Appendix VI.}\]
CHAPTER IV

TERRITORIAL DEVELOPMENTS FROM 1851 TO 1857

On September 9, 1850, President Millard Fillmore signed the Bill which created the Territory of Utah. The people of Utah received exactly what Thomas L. Kane had warned them against—a territorial government with "foreign" instead of home rule. This "foreign" rule—the appointment of Territorial officers by the Federal Government—was to be the source of much trouble to the Mormons, as will be seen in the next two chapters. On December 20, 1850, President Fillmore appointed the officers for the new territory: Brigham Young, Governor; B. D. Harris, Secretary; Lenuel D. Brandebury, Chief Justice; Perry Brocchus and Zerubbabel Snow, Associate Justices; Seth M. Blair, United States Attorney and Joseph L. Heywood, United States Marshal. Of these officials, Brigham Young, Zerubbabel Snow, Seth M. Blair and Joseph L. Heywood were Mormons.

Due to the slow communications of this day, word was not received of the formation of the new Territory until January 27, 1851. A company of eight headed by Captain Jefferson Hunt brought notice of the Act and appointments with

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1 Larson, p. 80.
2 Journal History, January 27, 1851.
it when it arrived in Salt Lake City from California on this date. 1 In one of the letters brought by this group, John M. Berhnisel wrote Brigham Young,

I have forwarded three copies of the law establishing the Territorial Government of Utah, by which you will perceive that officers may be sworn in by a justice of the peace of your present government. 2

In accordance with this information, Brigham Young was sworn in on February the third, just a week after the day on which the news of the appointments had been received, "by Daniel H. Wells, Chief Justice of the State of Deseret." 3

The Run Away Judges

During the summer of 1851, the other Federal appointees began to arrive. The first was Chief Justice Brandebury, on June seventh. 4 On July nineteenth Judge Zerubbabel Snow and Secretary Harris arrived. 5 The last of the officials, Associate Justice Brochus, arrived on August 17, 1851. 6

On July 31, with two of the Supreme Court justices present, enough to constitute a quorum according to Section 9

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1Ibid. Whitney in his History of Utah states, "A rumor of the fact preceded this (date) as early as November, 1850, but had not been deemed authentic." Orson F. Whitney, History of Utah, (Salt Lake City, Utah: George Q. Cannon and Sons Co., 1893), II, p. 442.

2Ibid. September 12, 1850.

3Ibid. February 3, 1850.

4Ibid. June 7, 1851.

5Ibid. July 19, 1851.

6Ibid. August 17, 1851.
of the Organic Act, Brigham Young issued a proclamation, provided for in Section 16 of the same act, defining the various judicial districts.\(^1\) Chief Justice Brandebury was assigned district one, which comprised Salt Lake County and surrounding area; Associate Justice Snow was assigned the second, which was made up of the counties north of Salt Lake; and Associate Justice Brocchus was assigned the third judicial district which included the counties south of Salt Lake.\(^2\)

Upon their arrival, the justices were accorded every respect due their high offices. For example, when, in the early part of September, a conference was held in the "Old Bowery," Chief Justice Brandebury, Associate Justice Brocchus and Secretary Harris were invited to occupy seats of honor on the stand with the general authorities of the Church. Given the opportunity to address the congregation, Judge Brocchus took it upon himself to rebuke the congregation for their religious beliefs. After nearly two hours of being chastised, the group became disorderly. Unable to make himself heard over the confusion, Judge Brocchus took his seat. After this oration, Brigham Young wrote several notes and letters to him to secure a public apology, but was unsuccessful. Shortly after this incident, Chief Justice Brandebury, Associate Justice Brocchus and Secretary Harris decided that they would return to


\(^2\)Journal History, July 31, 1851. See Appendix VIII.
the States. Brigham Young, upon hearing of their intentions, called on them and tried to induce them to remain, but they informed him that it was their intention to leave. On September 28, 1851, the "run away officials" left Salt Lake City for the States.

An excerpt from the Deseret News suggests that the reason for the departure of these officials was lack of litigation.

It is certain however that Judge Brocchus found an empty docket on his arrival there and no disposition amongst the people to give him employment. They would not go to law "any how he might fix it," so he resolved to throw up his sinecure and return eastward.

However this may be, Governor Young states after their departure, that he had made friends with the Officials which were returning to the States and that Brocchus had apologized for insulting the conference. But the friendship with the officials and the apology of Brocchus were somewhat late, for as Neff states, "the political pot was boiling."

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1Ibid. September 29, 1851. Letter from Brigham Young to President Fillmore concerning the returning officials.

2Deseret News, April 3, 1852. "Tullidge states: In nothing were the mormons more peculiar than in their judicial affairs. They did not believe in going to law with one another. Their judicial economy was after the pattern of the New Testament rather than that of Blackstone. It was this that made the Mormon rule so obnoxious to the federal judges and Gentile lawyers." Edward Tullidge, The History of Salt Lake City (Salt Lake City, Utah: Star Printing Co., 1856), pp. 198-200.

3Stout, IV, p. 414.

Upon the return of the officials, Utah was left with only Governor Young, Associate Justice Snow and United States Attorney Blair as the territorial officials. Brigham Young at this time appointed Willard Richards Secretary of the Territory pro term. Other minor appointments were made on the same basis, and Daniel Webster, then United States Secretary of State, sustained them. On October 4, 1851, Governor Young called a special meeting of the Legislature. While in session the Legislature passed an act which assigned Justice Snow to handle the litigation in all judicial districts, "or until a full bench of the Supreme Court of the United States for the Territory of Utah shall be supplied by the President and Senate of the United States."¹

Upon their return to Washington, the "run away officials" in their report to the President, stated that,

We have been driven to this course by the lawless acts, and the hostile and seditious feelings and sentiments of Brigham Young, the Executive of the Territory, and the great body of residents there, manifested toward the Government and the officers of the United States in asperation and denunciation so violent and so offensive as to set at defiance, not only a just administration of laws, but the rights and feelings of citizens and officers of the United States living there.²

¹Utah Territory, Legislative Assembly, Acts, Resolutions and Memorials (Salt Lake City, 1852), p. 323.
It is interesting to note the statement regarding the defiance of "just administration of laws," because there is no apparent record of any of them ever holding court in their respective Districts in the short time that they were in the Territory. One assumes from their statement that they were speaking of the murder of James Monroe by Howard Egan. This murder occurred a week before their departure; and prior to their leaving, Egan had not been arrested or indicted for the murder, and had remained all the time in Salt Lake City. The Egan Case holds an important spot in this history in that it was the beginning of the Federal and Territorial dispute over jurisdiction of cases and was to last until 1874.

The Egan Case

This report of the Federal Officials on their return to the States, also stated that a citizen of Utica, New York, had been murdered and his murderer had not been arrested. However, Howard Egan was arraigned in the U. S. District Court (First District) on October 17, 1851, before the remaining Federal Justice, Zerrubbable Snow, an arraignment probably made in order to disprove the statement of the "run away" judges.

To have a better understanding of this case, one must review some of the earlier years of Howard Egan's life. He was born on June 15, 1815, at Tuellemere, Kings County, Ireland. When he was eight years old his mother died, and his father

1Ibid.
moved the motherless family to Montreal, Canada. Five years after their arrival, Howard Egan's father died, leaving the family of nine children orphaned. From this time, only thirteen years old, Egan followed the "life of a sailor until grown."\(^1\) Sometime during the early part of 1838, Egan gave up the life of a sailor and took up the rope-making trade. It was at this time that he became acquainted with his first wife, Tamson Parshley, whom he married on December 1, 1838.

In October, 1841, he became a naturalized citizen of the United States; and "in 1842," he and his wife were converted to Mormonism by Elder Erastus Snow and were baptized.\(^2\) The same year, Egan moved his family to Nauvoo, Illinois, then the center of the Mormon population, where he established a rope-making business. He became a member of the Nauvoo police force and also "served as a bodyguard to the Prophet Joseph Smith."\(^3\) He was evidently very dependable in his duties, for Joseph Smith is quoted as saying, "We never feared when Howard Egan was on guard."\(^4\) While residing in Nauvoo, he accepted the Mormon doctrine of polygamy and began practicing it. In

\(^1\)Howard Egan, Pioneering the West (Salt Lake City, Utah: Skelton Publishing Company, 1916), p. 9.
\(^2\)Ibid., p. 6.
1844, he was sealed to Cathrine Clawson by Hyrum Smith;\(^1\) in 1846, he married Nancy Redding; and two years after the arrival of the Mormons in Salt Lake Valley, he married Mary Egan.

During the evacuation of Nauvoo in 1846, he was selected as a captain of a hundred.\(^2\) In 1847, he was captain of the ninth ten which entered Salt Lake Valley under Brigham Young. When Brigham Young returned in the fall to Winter Quarters, Egan was among the group. In the Spring of 1848, Egan and part of his family were selected to go with the company organized by Brigham Young and Heber C. Kimball which left on May 24, 1848, to Salt Lake Valley. In early 1849 Howard Egan returned east "to get his wife Nancy and their daughter Helen, and to pilot another company of saints cross-country to Salt Lake Valley."\(^3\) Upon his return in 1849 to Salt Lake Valley, he guided a company of forty-niners across the desert to the gold fields in California and returned in the Spring of 1850 to the Salt Lake Valley to finish settling his family. Upon his arrival, he was met by the news that one of his wives had willingly

\(^1\)Journal History, October 9, 1868.

\(^2\)When the Mormons moved out of Nauvoo, they were organized in groups of tens, fifties and hundreds. Over each of these groups there would be captains. A captain of hundreds would be the main captain over a hundred immigrants. These were in turn divided into two companies of fifty, which would be headed by a captain, called a captain of fifty. These two groups were each divided into groups of ten, over which another captain was placed, called a captain of ten. In this manner the Mormons moved west in an organized and regimented manner. Doctrine and Covenants, Section 136.

\(^3\)Drake, p. 16.
been seduced by a James Monroe and had given birth to an illegitimate child.  

The activities of Egan for the next year are not clear, but sometime in the early or middle part of September, 1851, he rode out of Salt Lake City in the direction of Ft. Bridger. On this trip he met the wagon train of which James Monroe was a member. The affair of Monroe and Egan's wife was quite generally known, for the captain of the wagon train had advised Monroe to leave for fear that Egan would come looking for him. Egan met the wagon train ten miles west of the Bear River and shot Monroe. On Sunday, September 31, 1851, Egan returned to Salt Lake City. The news of the murder seems to have spread rapidly, for Hosea Stout states that it was at a meeting on this Sunday that he heard of the shooting.

Seven days after Egan's return to Salt Lake City, Chief Justice Brandebury abandoned his post in the First Judicial District, where the case was eventually to be tried, and

1 Hosea Stout, IV, p. 417.

2 Ibid., IV, p. 418.

There is some dispute about the actual location of the shooting. Stout places it ten miles west of the Bear River in the area of Cache Cave in Echo Canyon. Whitney places it on Silver Creek near Wanship on the Weber River. Stout's account is assumed to be the most accurate for the following reasons: first, he was an eye-witness to the facts brought out in the trial; and second, there was some dispute whether the case was to come under the jurisdiction of the Territorial courts of the United States courts. This gives some indication that it happened near the border and would tend to discount Whitney, whose account placed it nearer to Salt Lake City. Refer to the map on the following page.

3 Ibid., IV, p. 391.
returned to the States (having tried no cases). On October 3, 1851, "a seventies' meeting was held in Great Salt Lake City for the purpose of trying Howard Egan for the shooting of James Monroe; after hearing the defendant, the case was dismissed."\(^1\)

Whether this was to have any effect on the decision of the civil trial cannot be said with surety, but probably it did have an influence. On October 17, 1851, Egan was arraigned in the United States District Court (First District) for the Territory of Utah, with Judge Snow presiding, with the prosecution for the United States conducted by Seth M. Blair. Prior to the trial Seth Blair "had been employed by and acted as counsel for the prisoner."\(^2\)

On October 18, 1851, George A. Smith rendered a plea to the jury for the life of Howard Egan. This evidently was his first trial or experience in pleading to a jury; for in his plea, he stated that he was new and unaccustomed to addressing a jury. He further stated:

I am not prepared to refer you to authorities on legal points, as I would have had not the trial been so hasty; but as it is, I shall present my arguments upon a plain, simple principle of reasoning. Not being acquainted with the dead language, I shall simply talk common mountain English, without reference to anything that may be technical. All I want is simple truth and justice be awarded him.\(^3\)

\(^1\)Journal History, October 3, 1851.

\(^2\)National Intelligencer, February 21, 1852.

\(^3\)Deseret News, November 15, 1851. See Appendix IX for the complete text of the plea.
Through the whole plea, Smith continually stressed that "common mountain English" and "common mountain law" were better fitted for such a trial than was the technicalities of the regular courts in the States.

In trying to save the life of Egan, Smith used every tool that was available, utilizing even the statements of the prosecution. One such statement was that "the disgrace which must arise from such a transaction had fallen on the head of the defendant. This was admitted by the prosecution." Smith continued his plea by stating that the laws that are applicable in the United States are not applicable in Utah. To illustrate this point, he quoted Section 17, of the Organic Act, which states that the United States laws were to be enforced in so far as they were applicable. This section was often to be used thus for purposes of getting around the Federal appointees and sections in the Organic Act which failed to provide certain needs. This will be seen in the next section on probate courts.

Throughout the whole plea, Smith tried to show that a new territory needs new laws. He reverted back to history several times, to show that laws which were good for an old and established country were unjust in newly founded countries. One of the classic examples that he cited was that of the Romans borrowing from the Greeks.

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1Ibid.

2Statutes at Large, IX, p. 458.
The laws of the twelve table were formed for a people possessing the Greek refinement and Greek ideas; Greek notions of right and wrong; they had put them in force, and, let me ask you what was the results? Read the pages of history, and hundreds of mourning families will tell the sad tale! The truth is written with the blood of thousands, through taking the rule, laws, and regulations of the old and rotten confederacy, and applying them to a new and flourishing territory! I argue, then, that these laws, which may have force in England, are totally inapplicable to plain mountain men.  

To further illustrate his point, he referred to the law as it then existed in England, according to which the only recourse against adultery was at law:

In this case, character is not estimated, neither reputation, but the number of pounds, shillings and pence alone bear sway, which is common in the courts of the old and rotten governments.  

In his opinion the only law in respect to adultery which should govern in this isolated place was, "that the man who seduces his neighbor's wife must die." In continuing his case, he referred to two similar cases in the east, in which the defendants were found not guilty. These were "New Jersey vs Mercer," and "Louisiana vs Horton."  

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1Deseret News, November 15, 1851.  
2Ibid.  
3Ibid.  
4Ibid. A case which was tried in Pennsylvania in 1864, comes closer to the Egan case than the two mentioned above. In this case, Commonwealth vs Moore, (1864) 2 Pittsburg, (Pa.) 502, the following reasons were given by the court telling why the husband was not justified in killing his wife's paramore: "While recognizing the rule that a confession of adultery may be provocation adequate to reduce the degree of the homicide, held that when the defendant heard of the adultery a week before the homicide, there was no ground for upholding that the offence was manslaughter."
Smith brought out in his closing remarks two strong arguments for his client; these were that "if Howard Egan did kill James Monroe, it was in accordance with the established principles of justice in these mountains," and that the United States did not have jurisdiction over the case because it was a territorial matter. Upon finishing his plea, Judge Snow gave the charge of the jury.

Judge Snow laid the principle of law before the jury in a very plain manner, which could leave no doubt in the jury's mind as to who had jurisdiction over the case. There was some doubt whether the crime was committed within the Territory. Judge Snow stated that if they found that the United States had jurisdiction, they must find the defendant guilty; but if they found that the crime occurred in Utah and that the Territory of Utah had jurisdiction, then they must find the defendant not guilty. Judge Snow's charge to the jury brought some response from a Washington, D.C., paper, which printed:

rather than murder, since there had been ample time for reflection after the defendant learned of the adultry. American Law Reports, X (San Francisco, California: Bancroft Whitney Company, 1921), p. 478. This would tend to cast some doubt on the Egan case, as he waited a whole year before he acted. Had this rule been in effect, the Egan case might have been decided differently, but this is doubtful, on account of the existing social conditions in Utah. In 1888, in a case similar to that of Egan's, the court held that "the law will not permit the husband to say that he slew the defiler of his wife in a heat of passion after deliberating upon the defilement of 24 hours." People vs. Holliday, 5 Utah 474. Had this ruling been in effect in 1851, Egan would not have been so fortunate.

Ibid.

Ibid. See Appendix X for the complete charge of Judge Snow. Judge Snow based his statements on the Statutes at Large which state,
To a mind untutored in logic of law, Messrs. Editors, the charge of the learned Judge Snow seems to establish two very important facts, to wit: First, that murder is a legal act within the limits of the Territory of Utah; and second, that the courts and juries of the Territory have ample jurisdiction over an undefined extent of country without the limits of the Territory. While reading this extraordinary charge, it would be borne in mind that the act organizing the Territory, Congress in express terms extended over the common law, and clothed the judges and courts with full jurisdiction.  

After Judge Snow had finished his charge to the jury, they were taken to the jury room; and after fifteen minutes of deliberating, they returned with a verdict of not guilty, as found in the indictment. The court thereupon discharged Egan.

On the verdict of the trial, Hosea Stout had some reservations, for he recorded in his diary, that "this is like to set a precedent [sic] for anyone who has a wife, sister or daughter seduced to take the law into his own hands and slay the seducer."  

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"that if any persons shall, within any fort, arsenal, dockyard, magazine, or any other place of district of country, under the sole and exclusive jurisdiction of the United States, commit the crime of wilful murder, such person or persons on being thereof convicted, shall suffer death." Statutes at Large, III, pp. 114-115. In a case dealing with this problem of jurisdiction, a sailor on a ship in Boston harbor murdered his shipmate. On being found guilty he appealed to the Supreme Court on grounds that the ship was in Boston, and therefore Boston courts should have jurisdiction and not the United States. Chief Justice Marshall ruled that he was on board ship and government property and therefore the United States had jurisdiction. He stated further that the States and Territories have jurisdiction over crimes that happen within their limits, as long as they are not on government property or some area that the United States has sole jurisdiction over. United States vs. Bevans, 16 U. S. 380. If this is to hold true in all cases, then the Territory was to have jurisdiction, for Egan was, if measured on a map, fifty miles within the borders of the Territory.

1 National Intelligencer, February 15, 1852.
2 Hosea Stout, IV, p. 418-419.
tions, for on March 6, 1852, the Territorial Legislature passed the Justifiable Homicide Act, which seems to have been a direct outgrowth of the Egan case. This Act provided that it would be justifiable homicide to kill the person who defiled a "wife, daughter, mother, sister or any other female relative or dependent."\(^1\)

The Egan case brings out a conflict that was to last down to 1874 when Congress resolved it with the Poland Laws. The problem that was to cause so much trouble concerned the question of which were to have jurisdiction, Federal or Territorial Courts, and to what extent the laws of the United States were applicable to the people of Utah.

Power to the Probate Court

Due to the burden that was placed on Judge Snow when he was authorized to preside in all three districts, the Legislature on February 4, 1852, passed an act giving the probate courts in the various counties greater jurisdiction. Section 30 of this act provided:

The several Probate Courts, in their respective counties, have power to exercise original jurisdiction both civil and

\(^1\)Utah Territory, Legislative Assembly, Acts, Resolutions and Memorials, (Salt Lake City, 1852), p. 140. This ordinance is still in effect today and can be found in the Utah Code Annotated, (Salt Lake City, 1953), 76-30-9 (4) in almost the same text. Utah seems to be one of the few states that have such a law, for the American Law Reports state, "Under Utah Statutes it seems that one is guilty of no criminal offense if, in a sudden heat, caused by the defilement of his wife or of a female relative, he slays the offender." American Law Reports, X (San Francisco, California: Bancroft Whitney Company, 1921), p. 473.
criminal, and as well in chancery as at common law, when not prohibited by Legislative enactment; and they shall be governed by the same general rule and regulations as regards practice in the District Courts. ¹

This power, granted to the probate courts, was to be a thorn in the side of the Federal officials from the time of its enactment until it was abolished in 1874. The main reason for so much of the conflict between the two functionaries was that the probate courts had as much power in Territorial matters as did the District Courts. The act, however, provided that appeals be taken to the District Courts; this is perhaps the only thing that gave the District Courts more power in Territorial matters than the probate courts. On February 19, Brigham Young recommended that the probate courts be given additional authority to grant divorces. ² On February 20, the bill relating to the probate courts having jurisdiction to grant divorces was read three times and passed by the Legislature. ³

To further assist in the enforcement of the laws, the Territorial Legislature on March 3, 1852, passed another act which provided for a Territorial Marshal, Attorney General, District Attorneys and, for each county, a Prosecuting Attorney. The Territorial Marshal was to be appointed by a joint vote of both houses of the Legislature, and was to execute all orders

¹Utah Territory, Legislative Assembly, Acts, Resolutions and Memorials, (Salt Lake City, 1852), p. 43. See Appendix XI.
²Hosea Stout, V, p. 62.
³Ibid.
and processes arising under the laws of the Territory. The Attorney General was also to be elected by the joint vote of both houses and his duties were "to attend to all legal business on the part of the Territory, before the courts, where the Territory is a part." In each judicial district, except the one where the Attorney General kept his office, there was to be a District Attorney, appointed by a joint vote of the Legislative Assembly; and his duty was to prosecute individuals accused of crimes arising under the laws of the Territory in his assigned district. The last of these law enforcement officers was the Prosecuting Attorney, who was to be appointed by the Probate Judge in each organized county. His duties were to attend to all legal business in the county in which the Territory was a party. As can be seen here, a judicial system so fully organized as this would tend to encroach upon the affairs and jurisdiction of the Federal Courts and officers.

As an additional aid to the courts, a board of arbitrators was organized on March 6, 1852, which was a council of twelve referees. These men were to act on a similar principle to that of the Mormon High Councils. The Act defined their duties as follows:

1Acts, Resolutions and Memorials (1852), p. 56. See Appendix XII.
2Ibid., p. 57.
3Ibid.
4Ibid.
That it shall be lawful for each organized county to elect a council of twelve Select men as referees, whose duty it shall be to decide all cases in litigation which may come before them by the mutual consent of the parties interested; and their decisions in all cases so brought before them shall be the end of all controversy in the matter. A majority of Select men shall constitute a quorum to do business. Provided that nothing herein contained shall be construed as to vest in said council any judicial power of said Territory.

Whether this law had any meaning, or was ever put into effect, has been unascertainable in this research. The exact relationship of this group and the High Councils is not clear because records show that the High Council at this time was still functioning in cases of a civil nature. Hosea Stout records on March 18, 1852: "The liquor partnership is strictly a chancery case but both parties have concluded to submit it to the High Council for their decision." Another case that indicates connection between the twelve referees and the high council is recorded on July 30, 1854: "The case of Sherwood vs. Adams was decided by the High Council, who rendered judgment in favor of Sherwood for one hundred & 97 dollars and Sherwood to pay the cost which occurred before the Probate Court." There seems to be an overlapping here, and it may

1Ibid., p. 52.
2Hosea Stout, V, p. 72.
3Ibid., V, p. 228. Neff in his writings stated: "Ecclesiastical influence tended to encroach dangerously upon the domain of civil affairs, and federal judges and Gentile lawyers in the main resented it. Under such circumstances possibilities of conflict were numerous." Neff, p. 7.
well be that the High Councils were elected to act as the twelve "Select" men for referees.

Soon after the legislative act regarding the probate courts, these courts began to function in all the fields of law. A few samples of their litigation can be drawn from Hosea Stout's records, which cases occurred during the early and middle part of 1852. Some of the more outstanding were a murder case on April 28, 1852, a contracts case on June 26, a replevin case on July 15, a case of resisting arrest on August 10 and a divorce case on September 13. Some felt that the Legislature had overstepped its bounds in granting these courts so much jurisdiction, but the new territory was without properly functioning courts from the time of its organization until the acts which gave the probate courts their power. A need thus arose for a court system that could maintain peace and order until the new federal judges could be appointed and until their courts were once again fully functioning.

Friendly Appointees

On August 31, 1852, the "run away officials" were replaced by Chief Justice Reed, Associate Justice Shaver and Secretary Ferris. Thirteen months after the desertion of the previous officials, two of the new appointees arrived in Salt Lake City. On October 26, 1852, "Secretary Ferris and Associate Justice

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1Ibid., V, p. 80.  
2Ibid., p. 86.  
3Ibid.  
4Ibid., p. 95.  
5Ibid., p. 100.
Shaver arrived in the city with a small train of goods belonging to Holliday and Warner. Judge Shaver and Judge Snow constituted a quorum in the Supreme Court according to Section 9 of the Organic Act. Judge Reed arrived in Salt Lake City on July 10, 1853, making the Supreme Court complete and all the officials present in the Territory. These judges were to be the most unbiased of the judges that were sent in the early years of the Territory. Of Judge Shaver the Deseret News stated "that he held courts regularly in his District to the entire satisfaction of Saint and sinner." Although Chief Justice Reed was in the Territory for only a short time, he had a more understanding view of the Mormons than had his predecessors. In a communication that was printed in many of the eastern presses he stated:

I have made up my mind that no man has been more grossly misrepresented than Governor Young, and he is a man who will reciprocate kindness and good intentions as heartily and freely as any one, but if abused, or crowded hard, I think he may be found exceedingly hard to handle.

Chief Justice Reed left the Territory in 1853 to go east on a visit. During this visit, he died in New York. Upon his death, John F. Kinney was appointed Chief Justice to fill the vacancy on August 24, 1853, by President Pierce; and Judge Snow had been replaced on August 1, 1854, by George P. Stiles.

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1Journal History, October 26, 1852.
2Deseret News, May 27, 1863.
3Neff, p. 177.
Utah had its first hanging at this time, for Hosea Stout records on September 1, 1854, that two Indians, Longhair and Antelope, were sentenced to hang for murder. On September 15, the two were taken two miles below the Jordan River bridge and hanged. "This is the first execution ever had in the Territory of Utah."¹

At the time of these friendly justices, a conflict did arise in Judge Shaver's court, contrary to Burton's statement that Judge Shaver "tacitly acknowledge the jurisdiction of the probate courts."² This failed to hold entirely true, for on October 20, 1854, an altercation arose between Judge Shaver's District Court and the Probate Court. Four days prior to this the United States Marshal, on direction of the District Court, was in the process of recovering some unlawfully held horses. To aid him in his duties, he procured the assistance of W. A. (Bill) Hickman. Levi Abrams, who had bought two of the horses, upon the repossession of the horses against his will, went to the probate court and had Hickman arrested for threatening him with a knife with intent to kill. Hickman was arrested, at which time he sued for a writ of habeas corpus from the District Court. It was served on A. Cumming, the arresting officer, but was stopped by Judge Smith, the probate judge. He stated that the prisoner was not the charge of the officer, but of the probate court. Another writ was issued and this time it was to

¹Stout, VI, p. 233.

Judge Smith who had to release the prisoner to the District Court. The outcome of the trial was in the form of a rebuke from Judge Shaver, and is as follows:

Judge Shaver discharged Mr. Hickman for several reasons among which were illegality on the face of the papers, another was that the Probate Court had no right to interfere [sic] with or call his court to account for actions done in compliance to an order from his court. And further from the evidence he had been guilty of no crime. He also forbid any court to meddle or trouble him further on the subject. 

This incident would not have had much significance had Judge Smith not been so set in his policies about the designation of the habeas corpus.

On June 29, 1855, Judge Shaver was found dead in bed. Hosea Stout records: "An inquest was immediately summoned by the Mayor, who decided he came to his end by a disease [sic] of the ear and brain."\(^\text{2}\) This brought to an end the era of the more friendly judges, for on July 9, 1855, Judge Drummond arrived in Salt Lake City to replace the late Judge Shaver.\(^\text{3}\) This newly appointed Judge Drummond, along with the previously appointed Judges Kinney and Stiles, was to be the source of Utah's greater conflicts with the Federal Government.

The Trouble Makers

The three new appointees were to be continually at odds with the Mormons for the next two years. On May 31, 1855,

\(^1\)Hosea Stout, VI, pp. 238-240.
\(^2\)Ibid., VI, p. 289.
\(^3\)Ibid., VI, p. 296.
Judge Kinney started for the States with the intention of having Brigham Young replaced, so Stout records, in order that Kinney himself could be appointed Governor. Getting a late start, he was unable to overtake the company he intended to travel with before it proceeded up Weber Canyon. He returned to Salt Lake City because the thoughts of the Indians and waters of the Weber proved too much for his courage. Judge Kinney's anti-Mormon tendencies were felt by the Mormons from the start, for Heber C. Kimball in a letter to F. D. Richards stated, "Judge Kinney is a bitter enemy against us, and Judge Drummond who came on this season, seems to be one with him."

Judge Drummond at this time began to denounce the Mormons at every occasion. One Gentile observer stated, "He was constantly saying that to whomever would listen to him, that these laws [the Territorial Laws] were founded in ignor-

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1Hosea Stout, VI, p. 288. It is difficult to explain Judge Kinney's actions, for he was reappointed Chief Justice in 1860 and was very friendly to the inhabitants of the Territory. He so won their respect that three months after his dismissal, they elected him as their Territorial delegate to Congress.

2Ibid. William Wadsworth, in his short autobiography, states that while living at this time in Mountain Green, in Weber Canyon, the inhabitants were having continual trouble with the Indians. This may have been the reason for Judge Kinney's fear of proceeding on alone and trying to overtake the wagon train which would have been well on its way up Weber Canyon. "Autobiography of William Wadsworth," in the possession of one of his daughters, Alice Wadsworth Simpson, residing at Hooper, Utah, p. 7.
During the fall of 1855, the Territorial officials moved to their new seat of government in Fillmore, Millard County. Shortly after their arrival, a grand jury was organized and at their opening session, Judge Drummond spoke:

Judge Drummond took occasion to express his opinion of the laws of Utah in relation to the power and jurisdiction of the probate courts. He most emphatically declared that under the Organic Act of the Territory of Utah the legislature could not confer, civil and criminal jurisdiction, by law on the probate courts, were not only contrary to, and inconsistent with the Organic Act, but an unwarranted stretch of power, not only beyond, but amounting to an abnegation of all law. He also instructed the grand jury that if they found, that any Probate Judge had exercised civil or criminal jurisdiction that it was their duty to indict not only judges, but all jurors and officers under them.

This was to be the first real open attack on the probate courts by any of the Federal Judges, and was to continue up to 1874.

1Jewels Remy, Journey to the Great Salt Lake, (London: W. Jeffs, 1861), I, p. 468. Samuel Richards in writing to his brother, F.D. Richards, said of Judge Drummond: "He has brass to declare, in open court that, the Utah laws are founded in ignorance and has attempted to set some of the most important aside." "Foreign Correspondence," Millenial Star, XVIII (London), pp. 204-205. Hereafter referred to as Millenial Star by volume and page.

2Hosea Stout, VII, p. 302. It is interesting to note some of the comments as to Judge Drummond's character, as one anti-Mormon writer stated: "A former member of the bench of Illinois, writes to me; 'I remember that when Drummond's appointment was announced there was considerable comment as to his lack of fitness for the place; and, after the troubles between him and the Mormon leaders got aired through the press, members of the bar from his part of the state said they did not blame the Mormons—that it was an imposition upon them to have sent him out there as a judge." William A. Linn, The Story of the Mormons, (New York: The Macmillan Company, 1923), p. 469.

On December 7, 1855, Samuel W. Richards wrote his brother Franklin D. Richards the following:
The year of 1856 began in much excitement, with the arrest of Judge Drummond, and was to be an interesting year for the probate courts, in that all the federal judges at one time or another were either being sued or were using them in their private suits against someone else for various grievances. The first and most significant of the cases brought before the probate courts was the case of "W. W. Drummond and his negro Cato, for the assault on Levi Abrams with intent to kill,"¹ on January 5, 1856. The suit began on January 7, in the afternoon before H. R. King, the probate judge for Millard county. A writ of habeas corpus was issued from the Supreme Court on the grounds that the probate court had no criminal jurisdiction. Judge Drummond on the following day appeared before Chief Justice Kinney. The writ of the previous day had been withdrawn, as Judges Kinney and Stile could not agree on it. Judge Drummond then appealed to Chief Justice Kinney alone, who granted the writ.²

"You have no doubt heard of the appointment and the arrival of Judge Drummond in this Territory. He has lately been holding court in this place which has given him opportunity to show himself. . . . He has brass to declare, in open court that the Utah laws are founded in ignorance, and has attempted to set some of the most important ones aside. This being the highest compliment he has to pay to Utah legislators, we shall all endeavor to appreciate it. And he, no doubt, from his great ability to judge the merits of law, will be able to appreciate the merits of a return compliment some day. His course and policy so far seem to raise a row if possible, and make himself notorious." Millenial Star, XVIII, pp. 204-205.

¹Ibid., VII, p. 333.
²Ibid., VII, p. 334.
As the trial got underway, Hosea Stout, Kelting and A. Miner were counsel for Judge Drummond and his servant. W. A. Hickman, T. S. Williams and Almerin Grow were counsel for the defense. Objections were made as to Grow's being an Attorney at law, because Judge Kinney had suspended him in October of the previous year. He contended that he had been elected Territorial District Attorney for that district and was there to defend the rights of the probate courts. Judge Kinney decided he could not practice law. The court made little progress during the day, and adjourned till the following day.¹

The morning of January 9, the Supreme Court was to have met at the State House. While Judge Drummond was on his way there, he was intercepted by a posse who would not allow him to leave the fort. The other justices tried to persuade them to let him attend the session but the posse was not to be swayed from its intention. The meeting place of the Supreme Court was then changed to a Mr. King's house. The judges were then to undergo a still worse humiliation, for the posse would not let Drummond sit on the Bench and again the wheels of the judiciary were brought to a standstill. Not knowing exactly what to do, the Court adjourned till the next Friday. After this trouble, they then retired to the School House to hear the closing arguments in favor of the probate courts.

It seemed now that the death knell of the probate court would inevitably be sounded, as Judge Kinney's known and avowed opinion was adversely to the powers of the pro-

¹Ibid.
bate courts, yet their time had not come for Judge Drummond on the meeting of Kinney's court withdrew the suit and thus the court lives.¹

The reason for the assault and the dropping of the charges are not clear in history, but apparently a compromise was reached to drop the charges on both sides.

On January 30, another Federal Judge was brought before the probate court. This time it was Chief Justice Kinney. He was being sued by Almerin Grow for having suspended Grow's right to practice law. Grow was also asking for $5,000 damages. Grow had sued Kinney in the District Court on January 15 but--Kinney's decision was sustained. Grow found no sympathy in the probate courts, which he had tried to defend at the first of the month, for once again Kinney's decision was sustained.²

To add more fuel to the judicial fire that was now burning, Brigham Young began his rebuking of the courts in

¹Ibid. Waite gives the following account of the Drummond affair:
"The court being about to be held in Fillmore, a Jew was hired for $25 to quarrel with Drummond. As a part of the programme, also, he was to strike the Judge. The Jew played his part, except the blow, which, for want of opportunity or courage, was omitted. Instead of this he sent to the Judge an insulting message, by the hands of a colored 'boy' belonging to Drummond. The boy was sent back with a raw-hide, and instructed to 'lay on' the same to the back of the Israelite, which Cuffy obeyed with much spirit. Complaint was made by the Jew to the local magistrate. A warrant was issued, and Drummond and his Negro were both arrested.
The result of this emeute was a sort of compromise, in which it was understood that the Judge should not interfere with the probate courts, and he was set at liberty."


²Ibid., VIII, pp. 342-347.
Sunday meetings. After having attended court with some of the general authorities two days prior to the Sunday meeting, he rebuked the members who were frequenting the court rooms for amusement, and warned them that they must desist or he would send them on missions to help them put their time to better use. He also expanded on the uselessness of lawyers and the misapplication of the laws on the part of the courts. In putting over his point, he stated: "Keep away from court houses; no decent man will go there unless he goes there as a witness, or is in some manner compelled to."  

On April 21, 1865, Judge Kinney left for the States with his family. Shortly after the departure of Judge Kinney, Judge Drummond made arrangements with Judge Stiles to hold court for him in Carson; and on May 17, 1856, he set out for Carson Valley accompanied by a guard and some missionaries going to Australia. When next heard of, Judge Drummond was in California, and it was there that he started his attack on Brigham Young and the people of the Territory. On July 29, the remaining federal judge, George Stiles, sued Thomas Bowan in a probate court in an action of Assumpsit. The facts of the outcome are not clear, but it is interesting to note that one of the Federal Judges resorted to the use of the probate court. The most likely reason is that the probate courts were


the only ones open to him with the departure of the other two federal judges. On August 5, 1856, W. M. F. Magraw was sued by Erastus Snow for $900 for carrying the mail from Utah to Independence. In this trial the jury rendered a verdict of $630 in favor of Snow. Not letting well enough alone, Magraw appealed, and on September 13, Snow was given the full $900.¹ This may account for some of Magraw's bitterness and derogatory reports.

The next event that was to have great significance in bringing about the Utah War, started with a conflict in Judge Stiles' court. The conflict was concerned with the United States Marshal's right to serve writs and impanel juries when the courts were sitting as Territorial courts. The Territorial Marshal claimed it was his right to do so. When Judge Stiles took the side of the United States Marshal, a number of local lawyers, led by James Ferguson, entered the court room and began to threaten and intimidate the Judge, who then adjourned court.² At this outburst Stiles appealed to Brigham Young to sustain and protect him in the discharge of his duties. Brigham Young's reply to him was "that if he could not sustain and enforce their laws and institutions, the sooner he adjourned

¹Ibid., VII, pp. 363-364.
²Ibid., VII, p. 402.
his court the better." He records the result of this controversy between Judge Stiles and the lawyers:

Last night the Law Library of Judge Stiles and T. S. Williams was broken open and the books and papers there taken away. A privy near by was filled with the books and a few thousand shingles and laths added on the caern set on fire and consumed. _Sic Transit Lex Non Scripti._

From what Stout records, the papers were saved but the books were burned. This was to be one of the causes of the Utah expedition. It is probably that the Federal Government believed that the court records were burned when the burning was first reported.

Early in 1857 before Judge Stiles' departure for the United States, the question of jurisdiction arose in the courts. This time the United States District Court was challenged concerning its jurisdiction over Territorial cases arising under Territorial laws. On February 12, 1857, the Court met and overruled the plea.

... but decided while sitting as a U. S. Court, it could not try Territorial cases and that U. S. Marshal could not execute the law of Utah or act in her courts and dismissed the U. S. jury and Dotson the U. S. Marshal left the court.

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1Waite, p. 47. This is also in Bancroft, p. 498 and Linn, p. 471. Judge Stiles had been a member of the Mormon Church during the Nauvoo period and was more or less prominent in the affairs there, for he served as city attorney. Joseph Smith, History of the Church, VI, pp. 331 and 445. Stiles had come to Utah, but after arriving there he had fallen away and been excommunicated. Roberts, IV, p. 199.

2Hosea Stout, VII, p. 387.

3Ibid., VII, p. 402.
The Territorial Courts for once had scored a victory, although it is not surprising in that when the jurisdiction of the probate courts was being tested in the Drummond case, Judges Stiles and Kinney could not reach a full agreement on the *habeas corpus* which perhaps indicates that Stiles felt the Territorial courts had jurisdiction. On April 15, 1857, Judge Stiles, General Burr and United States Marshal Dotson left Salt Lake City for the States.¹

With the departure of Judge Stiles, Utah was once again without a Supreme Court, District Courts and Federal Marshal. It was at this time that all the disparaging reports about the Utah residents were being sent to Washington. The first report of significance was that of W. M. F. Magraw to the President on October 3, 1856, in which he stated:

> With regard to the affairs and proceedings of the probate court, the only existing tribunal in the Territory of Utah there being but one of the three federal judges in the Territory, I will refer you to the records, and the evidence of gentlemen who assertions cannot be questioned; as to the treatment of myself, I will leave that to the representation of others; at all events, the object I have in view, the end I wish to accomplish for the general good, will preclude my wearying you with a recital of them at present.²

On March 30, Drummond forwarded his report based on exaggerated facts. The most outstanding was the Gunnison Massacre, which was blamed on the Mormons, although Drummond himself sentenced some of the Indians for the crime. He accused

¹Ibid., VII, p. 408.
²Tullidge, p. 131.
the Mormons of poisoning Judge Shaver. Perhaps the greatest exaggeration was the one in which he stated:

That the records, papers &c., of the Supreme Court have been destroyed by the order of the Church, with the direct knowledge and approbation of Governor B. Young and the federal officers grossly insulted for presuming to raise a single question about the treasonable act.¹

With such incriminations being circulated about the Mormons, the Federal Government did not take long in investigating the actions of the people in the Territory of Utah. President Buchanan, not waiting for Congressional sanction, dispatched the Army to Utah. Thus, the Mormons were not as fortunate after the desertion of Kinney, Drummond and Stiles as they had been when the previous judges deserted their posts. This time Utah was to suffer a military expedition and receive judges who were not to be friendly to the people of Utah.

CHAPTER V

GENTILE REGIME

After the departure of the Federal officials, the Mormons were to have peace for only a short time. Upon receiving the adverse reports of the judges, President Buchanan, in the spring of 1857, appointed a governor to replace Brigham Young and at the same time ordered the Army to Utah to install the new governor and other new officials. On July 24, while the Mormons were celebrating the tenth anniversary of their arrival in the valley, Brigham Young received the news that an army was being sent to Utah to maintain peace and order. Upon hearing this, Brigham Young instituted his stand-and-fight and his scorched-earth policies. These were to prove useful bargaining points in that the Mormons were able to hold the army out of the Valley during the winter of 1857-58. This, however, did not help in bettering the relations between the Mormons and the newly appointed officials. It was to cause some antagonism with one of the judges, Chief Justice Eckles, for he spent the whole winter gathering depositions against the Mormons, which depositions became useless after President Buchanan's pardon, although he and the other judges tried during their stay in Utah to use them in their court actions.
Period of Occupation

On November 19, 1857, the main body of the civil authorities arrived at Camp Scott, some two miles above Ft. Bridger, in Green River County. It was here that the Civil authorities separated themselves from the military and formed their own encampment which was called Ecklesville in honor of Chief Justice Eckles, the newly appointed chief justice for the Territory. Thus Utah "had two capitals during the winter of 1857-58, Salt Lake City and Camp Scott on Black's Fork."1 Judge Eckles upon his arrival spared no time, for although his associates were not in the Territory, he moved with assurance and organized a District Court for the purpose of bringing the rebellious Mormons to justice.2 On November 21, 1857, Governor Cumming, in his proclamation to the people in the Salt Lake Valley, stated that the people of Utah were in a state of rebellion because of their treasonable acts of violence, and warned them that proceedings would be instituted against them in Judge Eckles court.3 During the winter the court was kept busy, not with the Mormon problem, but with that of keeping peace and order in the camp. Nonetheless, a grand jury was impanelled for the purposes of the court, which

3 House, Executive Document, No. 71, p. 76.
after investigating the facts, returned an indictment against Brigham Young and sixty of his principle associates. The legality of this court is a matter of conjecture; it was, however, a direct violation of the Territorial Legislative Acts designating the Judicial districts.¹

Due to the efforts of Thomas L. Kane, Governor Cumming was able to precede the army into the valley; and through his talks with Brigham Young, a compromise was reached by which the army could enter Salt Lake Valley but was to camp outside of Salt Lake City. On June 26, Johnston's army entered the valley from Emigration Canyon and proceeded on through Salt Lake City, south to Cedar Valley, where Camp Floyd was established. Although the Mormons had scored a victory in getting the troops moved outside of Salt Lake City, they were to pay for it later in the adverse decisions of the Federal Judges in their various courts. While in the valley, Cumming examined the court records; and in his report to Secretary Cass, he stated:

Since my arrival, I have been employed in examining the records of the Supreme and District courts, which I am prepared to report as being perfect and unimpaired. This will doubtless be acceptable information to those who have entertained [sic] to the contrary.²

¹Atlantic Monthly, III (March, 1859), p. 373.
²Letter of Cumming to Cass, May 2, 1858, "Governor's Correspondence File, 1858," State Department Territorial Papers, 1853-1870, MSS in National Archives, Washington D.C. Microfilm copies in the Brigham Young University Library.
This report threw a new light on the Mormons and probably caused Buchanan to regret his hasty actions in sending the army out to subdue a misrepresented society. Hosea Stout states that even Cumming was "very much astonished to find that the Utah Library and Court records were not burned as reported to the government and wondered how utterly false reports could be raised."¹

Judge Eckles, upon the arrival of the army in Utah, established his residence at Camp Floyd. Shortly afterward, he received a transcript of proceedings of a probate court in Manti from Governor Cumming. The judge, upon examining it, replied to Governor Cumming that it was in excellent style, and that everything was right, but felt the probate court could not exercise criminal jurisdiction.² This was to be the beginning of another judicial crusade against the probate courts and appointees of the Territorial Legislature to territorial offices of law enforcement. The first of these outward restrictions of the court came when a David McKenzie was arrested by the United States Marshal. Upon his arrest, McKenzie sought legal counsel and sent for Hosea Stout who was denied the privilege of seeing him because Judge Eckles had instructed the marshal not to let the prisoner see anyone. Hosea Stout tried four or five times before he was allowed to

¹Hosea Stout, VII, p. 450.
²Journal History, June 25, 1858.
see the prisoner.\(^1\) Thus making himself unpopular in Utah,
Eckles had denied a prisoner a basic American right, the right
of counsel. It was also at this time that Judge Sinclair,
the second member of the famous trio of judges, arrived in
Salt Lake City on July 31 with one of the local merchants.\(^2\)

On August 23, 1858, Judges Eckles and Sinclair departed
for Fillmore to override the legislature and re-establish the
seat of government there. Upon their arrival, they did not
take long to see that there had been grounds for making Salt
Lake City the capital, for on September 4, they returned to
the city.\(^3\) Shortly after his return to Salt Lake City, Judge
Eckles departed for the States with a small detachment of
troops and several apostate Mormons. Hosea Stout stated:
"He leaves without an attempt to put the law in force as he
boasted he would."\(^4\)

Judge Sinclair, on October 4, opened court in Salt Lake
City where his first actions were to try to reopen the treason
charges which Judge Eckles had worked up against the Mormons
during the preceding winter.\(^5\) Failing in this, a motion was
made in Sinclair's court by David Burr to disbar James Ferguson,
Hosea Stout, and J. S. Little, a trio of popular Mormon lawyers,

\(^1\) Hosea Stout, VII, p. 421.
\(^2\) Ibid., p. 459.
\(^3\) Ibid., pp. 463.
\(^4\) Ibid., pp. 464-465.
\(^5\) Journal History, December 23, 1858.
on the grounds that they had used abusive language in addressing Judge Stiles in his February term of court in 1857 in Salt Lake City. The charges were dropped against Hosea Stout and J. S. Little, and Ferguson was later found not guilty by a jury composed of both Mormons and Gentiles. On November 4, 1858, Judge John Cradlebaugh arrived in Salt Lake City, once again giving the Supreme Court a quorum.

On November 26, 1858, the question of jurisdiction arose in the District Court concerning "the right of the Attorney and Marshal for the U. S. to prosecute & execute the laws of Utah in preference to the Marshal and Attorney for Utah." The court met in several sessions and discussed this problem; and finally on December 22, 1858, Judge Sinclair and Judge Cradlebaugh, who was out of his district, ruled that the United States Attorney and Marshal were the proper officers to function in both United States and Territorial Courts, rather than the territorial officials. Judge Cradlebaugh at the time was more interested in what was going on in Salt Lake City than in what occurred in his own district, which was the one south of Salt Lake City. While in Salt Lake City, he

2Ibid., p. 38.
3Ibid., p. 472.
4Ibid., p. 477.
voluntarily officiated as alderman and prosecuting attorney to
the exclusion of the officials that were appointed by law to
perform such duties. ¹

On January 18, Judge Sinclair adjourned court without
having heard several criminal cases. In adjourning he stated
that these cases were all against the territory; and since the
territory had not provided funds to meet such court expenses,
that he had no other alternative than to dismiss without hear­
ing them. This was all done, even though at the time of his
dismissal, the Legislature was in the process of passing a
bill to take care of such expenses. ² The United States
Attorney, Alexander Wilson, had attempted to get all these
cases tried before the court adjourned, but was unsuccessful.
He therefore pressed for a special session, but this was turned
down by Sinclair. The prisoners were released from jail by
the probate judge of Salt Lake County at which time Wilson
once again appealed to Sinclair for a special session and was
once more refused. ³ Due to the conflict between the Mormons
and the Judges, litigation in the district court was greatly

¹ Journal History, December 24, 1858.

² Senate, Executive Document, No. 32, p. 24. Seth M.
Blair in writing to General Houston stated: "Next is Judge
Sinclair who has held a court for the last three months,
three-eight sitting days, and has tried one case only, and
that was pardoned by the presidents proclamation." Journal
History, January 15, 1859. Judge Sinclair adjourned his
court on January 18, more probably because of the fact that
his bluff was uncovered than because of the lack of funds
from the Territorial Legislature.

³ Ibid., pp. 24-25.
reduced. Because Wilson's income was based on litigation, he found it necessary to leave the territory being unable to supplement his income even in private practice.

During the early part of 1859, Judge Cradlebaugh decided that he would hold court in his district, which was the counties south of Salt Lake. On March 7, the Judge arrived in Provo, accompanied by two United States Deputy Marshals and a company of United States infantry, under the command of Captain Heth. Upon their arrival the troops were encamped close to the seminary building where court was to be held. The next morning the grand jury was empanelled and the Judge proceeded to charge the jury, and also took the liberty to criticize the leaders of the Mormon Church and the laws of the territory. According to Hosea Stout, he also spoke vindictively of the probate court:

He denounced the Probate Courts in the bitterest terms and impugned the motives of the Legislature, accused them of legislating for the purpose of tramiling the District Court & for the purpose of preventing the punishment of crimes and the like and referred to everything that had happened or been even falsely reported in the District for the past 3 or 4 years and charged the whole to the authorities of the church.

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1Hosea Stout, VII, p. 505. The probable reason for Johnston's filling the request of Judge Cradlebaugh was that in his instructions from the War Department, he was instructed that "should the governor, the judges or marshal of the Territory find it necessary directly to summon part of your troops to aid either in the performance of his duties, you will take care that the summons be promptly obeyed." Senate, Executive Document, No. 32, p. 6.

2Ibid., pp. 505-506.
In further charging the jury he declared that the troops had been brought "to keep and take charge of prisoners and keep the peace and save the county expense."1 This, however, caused more contention among the people and was the source of some conflict.

On March 10, the question came up in the court concerning who was to prosecute for the Territory, Seth M. Blair, Attorney General for the Territory, or Charles Wilson, the United States District Attorney. Judge Cradlebaugh ruled that the United States Attorney was the proper office to try the cases arising under the Territorial laws. He stated that the legislature had the right to create the office of Attorney General, but did not indicate what duties he thought such an office should have.2

On the day following Seth Blair's unsuccessful attempt to be recognized by the court, Hosea Stout presented the commission of John Kay as Territorial Marshal, and Stout asked the court to have the same spread on the record that he might be recognized in his office. The court allowed his commission to be spread on the record but was refused recognition in his office.3 Thus, two of the territorial officers were not recognized by the court and were, therefore, restricted in their ability to function within the jurisdiction of the

1Ibid.
2Ibid., pp. 506-507.
3Ibid., p. 507.
District Court. On March 14, Governor Cumming arrived in Provo to protest the presence of the troops stationed there. In the ten days that he was in Provo, he was unable to effect any kind of agreement as to their leaving. On his return to Salt Lake City, he issued a proclamation protesting the action taken by the military commander in sending troops to Provo.\textsuperscript{1}

On March 18, the breach in any friendly relations that may have existed between Judge Cradlebaugh and the Mormons was increased when Judge Cradlebaugh subpoenaed seventeen Springville citizens to appear and testify before the grand jury. It was by this means that he decoyed two men, A. F. McDonald and Hamilton Carnes, into court, where they were arrested on a private bench warrant.\textsuperscript{2} This incident caused much excitement in Provo and added to the unfriendly relations. A further contribution to the unrest of the Provo citizens was the question in Court of the Mayor and some of the leading men of Provo about the Parrish murder in Springville and the Mountain Meadows Massacre of which they were cleared. Due to the unorthodox procedures of Judge Cradlebaugh, the people became so restless that he felt it necessary to send for reinforcements for the troops stationed in Provo. On March 29, 1859, Hosea Stout stated: "Major Paul's command of 8 companies of infantry and one Battery is now posted on the hill 2 or 3 miles north of Provo. On April 5, the court

\textsuperscript{1}U. S., House, \textit{Executive Documents}, No. 78, 36th Cong., 1st Sess., p. 22.

\textsuperscript{2}Hosea Stout, VII, p. 508.
adjourned, at which time the troops, Judge Cradlebaugh and the three prisoners, Carnes, McDonald and Bartholomew, returned to Camp Floyd. The prisoners remained at Camp Floyd until the middle of summer when they were released.

Due to the irregular proceedings, many reprimands were forwarded to Utah from Washington D.C. to the various officials involved. General Johnston received one, in which he was instructed that he had exceeded his authority and that the arrest and imprisonment of the Mormons were illegal. The prisoners were thereupon released on July 8, 1859. Judges Cradlebaugh and Sinclair had so far overstepped their authority that Attorney General Jeremiah Black wrote and explained their duties to them as follows:

The conditions of things in Utah made it extremely desirable that the judges appointed for the territory should confine themselves strictly within their own official sphere. The government had a district attorney, who was charged with the duties of public accuser, and a marshal, who was responsible for the arrest and safekeeping of criminals. For the judges there was nothing left except to hear patiently, according to the evidence adduced on both sides. It did not seem either right or necessary to instruct you that these were to be your interference with the public affairs of the territory, for the executive never dictates to the judicial department.

In the same communication, Attorney General Black stated that the President of the United States was of the opinion that the

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1Ibid., VIII, p. 513.
2House, Executive Document, No. 78, p. 31.
3Hosea Stout, VIII, p. 521.
4Senate, Executive Document, No. 32, pp. 2-4. See also Roberts, IV, p. 497, and Neff, pp. 495-497.
governor alone had the right to requisition troops; that their appearance in Provo was unnecessary; that custody of the prisoners was the marshal's duty; that the troops should not have been kept in Provo against the governor's will; and that such disregard for these rules was very unfortunate. As a result of this, Judge Cradlebaugh had lost face in Washington.

On June 16, Chief Justice Eckles arrived back in the territory too late to participate in the excitement that had preceded his arrival. But he once again resumed his crusade against the Mormons. On July 23, a certain Delrose Gibson had been found guilty of murder, and had been sentenced to the penitentiary. When the Third District Court convened, one of the first acts of United States Attorney Wilson was to issue a writ of habeas corpus, on the grounds that the probate courts did not have jurisdiction. The District Court ruled, on August 2, that the probate courts did not have jurisdiction, and that the trial of Gibson was invalid. As a result of this, Judge Eckles issued writs for the release of any others that had been convicted by the probate courts, thus setting them free upon the community. As a result of this, there was more lawlessness, because unruly inhabitants knew that the probate courts could not convict them and have the sentence upheld.

1 Ibid.
2 Hosea Stout, VIII, p. 520.
4 House, Executive Document, No. 78, pp. 33-40. See also Hosea Stout, VII, p. 523.
The legislature was in the process of legislating court funds, for the lack of which the action of the District court was almost at a stand still. Thus conditions tended to promote more lawlessness for neither of the courts were functioning.

Because of the decision of the district court regarding the probate court, Governor Cumming sided with the Mormons, and a severe conflict grew out of this. Several letters were sent to Washington representing both sides, making various accusations. Governor Cumming requested that the probate courts be given the recognition that the Territorial Legislature had intended for them, and that the territorial marshal be given recognition as the officer authorized to conduct territorial business in the courts.

During the remaining two or three months in 1859, the Federal Judges were rather inactive. One of the few things of any importance was Judge Eckles' opening court for the naturalizing of citizens. This court was, however, of a short duration, for his main activity was that of intimidating the Mormon applicants. After a few days he adjourned court.

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Letter of Cumming to Cass, March 22, 1860, "Governors Correspondence File, 1860," State Department Territorial Papers. In this letter Cumming stated:

If Congress will sanction the action of the probate court in exercise of the power claimed by it, I entertain little doubt that the community will, ere long, be relieved from the bands of desperados we have, by their presence, rendered the tenure of life and property unsafe here for the last twelve months.

The action of the probate court now in session is marked by calmness, justice, and decision, and I believe that under present circumstances, it is the only remedy for the existing evils."
On December 12, 1859, Governor Cumming in giving his Governor's Message to the Legislature, spent much of his time in discussing the probate courts. In speaking of some of the decisions of the judges, he stated:

I am not aware that any case has come before these Officers in such form as to elicit a decision of its merits so as to establish a legal principle. I would therefore recommend that this question be taken up through the proper tribunals for a final decision. If the action of the Legislature be sustained, this community will enjoy the undisputed right of protection always present, instead of being obliged to wait the tardy action of the District Court, which are in session but once a year. If, however, the decision of the Supreme Court should be adverse to the exercise of such power by the Probate Courts, you will then be relieved from the embarrassments growing out of its disputed powers.¹

It is interesting to note that the judges were never unified in their attacks on the probate courts. Individually they tried to restrict these courts, but if they had been unified and had put the problem before the Supreme Court, they could have stopped the probate courts until the case could be appealed to the United States Supreme Court. It took eighteen years of various combinations of judges to reach this point.

The probate court in Salt Lake County continued to function irregardless of the District Court decision of August 2, 1859, for Hosea Stout records on March 23, 1860, that seven indictments for larceny and six for stealing were found by the grand jury of this court.² The Mormons were soon to have peace

¹Messages of the Governors, 1851-1876, Typewritten copy in the Library of the Utah State Historical Society, Salt Lake City, Utah, p. 82-1 and 82-2.
²Hosea Stout, VIII, p. 533.
for a few years, for in the summer of 1860, Judges Eckles, Sinclair and Cradlebaugh had either been replaced by the President, or had resigned. These three justices were succeeded by the former Chief Justice of the Territory, John F. Kinney of Iowa, R. P. Flennicker of Pennsylvania, and H. R. Crosby of Washington Territory. These men were to prove more friendly to the Utah people and their courts.

The Inactive Period

The next ten years in Utah saw very little action on the part of the Federal officials insofar as the jurisdiction dispute was concerned. The judges were either friendly or found other sources on which to release their prejudices. Judges Flenniker and Crosby arrived in Salt Lake prior to Judge Kinney, and assigned themselves to the judicial districts of their choice, rather than being assigned by the Legislature. To the residents of the area, this must have seemed like a repetition of what had already happened with the previous judges.

Judge Kinney on his arrival in Salt Lake City, seeing the situation that existed, rebuked the judges, and ruled that the assignment of districts was to be made by the Legislature only; that the judges were authorized to name the time and place of holding court and were restricted to providing for the federal courts; and that the territorial courts were to be

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1 Sacramento Union, October 18, 1860, as quoted in the Mountaineer, November 24, 1860.
provided for by the legislature.\(^1\) On November 12, 1860, Governor Cumming addressed the Legislature and asked it to assign the Federal judges to their districts. The Legislature, however, had not acted on this matter; and on December 10, Governor Cumming addressed it very sternly, because he had become vexed by its failure to act in assigning the Federal judges. He instructed the legislature that "there should be careful avoidance on your part of any action which might be construed into desire of unnecessarily postponing the holding of district courts for the transaction of Territorial business."\(^2\)

In March, 1861, a case was appealed to the district court of which Judge Kinney was the judge. The case was being appealed from a probate court on the grounds that the probate court did not have jurisdiction to try the case. Judge Kinney reversed all holdings of his predecessors, and ruled that the Legislature's grant of authority to the probate courts under the sanction of the Organic Act was valid and held that the criminal had been properly tried and convicted before this probate court.\(^3\)

Early in 1862, Judges Flenniken and Crosby resigned their positions as associate justices and left Salt Lake City. On the third of April of that year, President Lincoln appointed Thomas J. Drake and Charles V. Waite to replace them.

\(^1\)Mountaineer, October 13, 1860.
\(^2\)Messages of the Governors, pp. 82-21 to 82-23
\(^3\)Deseret News, March 20, 1861.
Early in 1863, Judge Kinney had Brigham Young arrested. It at first appeared to the residents of Salt Lake City that the friendly overtures of Judge Kinney had come to an end.

Roberts had the following to say of the complaint:

To prevent the possibility of an arrest by military authority, with all its dangers of armed conflict, a friendly complaint was filed before Chief Justice Kinney, charging Brigham Young with violation of the anti-bigamy law. He was arrested by Mr. Issac L. Gibbs the United States Marshal, and promptly appeared before Judge Kinney in chambers at the state house (the 'Old Council House'), where he was bound over to wait action of the Grand Jury at the next term of the United States Courts, for the third district, which included Salt Lake City--Judge Kinney's district. His bail was fixed at two thousand dollars. By the time the next term of court arrived the excitement had blown over, the grand jury found no indictment against President Young and he was discharged from this recognizance, and this sans reproach to the grand jury.¹

Nonetheless, Judge Kinney so won the respect and admiration of the people that after his dismissal from office on June 11, 1863, they elected him to represent them in Congress as their Territorial Delegate on August 3 of the same year. It is difficult to explain some of Judge Kinney's indifference toward the Mormons during his first appointment, but it is believed that it was more political than personal. John Titus was appointed Kinney's successor as Chief Justice of the Territory, Judge Waite resigned in 1864, and was succeeded by Samuel P. McCurdy of Missouri.²

Peace reigned in the court dispute until April 24, 1866, at which time Judge Drake attacked the probate court and declared

¹Roberts, V, p. 29.
²Neff, p. 699.
that it had no jurisdiction. Judge Drake at this time had been in the territory four years and, according to the Journal History, "had never been to the place appointed by law for holding the court and never resided in the district, but has been once a year to the place assigned by the Supreme Court for the Federal Term." 1 On April 24, Judge Drake did, however, hold court till April 26, in Provo; and it was here that he voiced his opinion of the probate courts, stating that they were administrators of wills and estates and that their authority went no further.

On June 11, 1866, at a Congressional investigation of affairs in Utah, a Captain D. B. Stover, who had been stationed there, was asked the following question: "What action, if any do the dissenting Mormons, and citizens of the United States who never were Mormons, desire Congress to take, with regard to the government of the territory?" To this he gave the following reply:

The citizens and dissenting Mormons desire that Congress shall repeal some of the acts of the Utah territorial legislature in regards to the courts, in order that the judges and all the jurors shall not be Mormons; also to change the election laws, giving to citizens of the United States the elective franchise after a residence of thirty days. 2

This seems to be one of the main starting points for subsequent legislation in regard to the power of the territorial courts and appointees.

1 Journal History, April 24, 1866.

During the next four years, very little happened in the courts in regard to the jurisdiction problem. The only thing of importance was the resignation and appointment of new justices. On July 27, 1868, Charles C. Wilson, who had been United States District Attorney under Cumming's administration, was appointed Chief Justice to succeed John Titus. On this same day, Enos Hoge of Illinois was appointed to replace Judge Drake.\(^1\) On April 5, and April 19, 1869, O. F. Strickland and C. P. Hawley respectively were appointed to replace Associate Justices McCurdy and Hoge.\(^2\) On June 17, 1870, James B. McKeen, of North Dakota, was appointed Chief Justice, replacing Charles C. Wilson.\(^3\) This appointment, although unknown to the Mormons at that time, was to be instrumental in the ending of the probate courts' wide jurisdiction and the offices of territorial marshal and the attorney general of the territory. On October 17, 1870, Judge Hawley, while holding court at Beaver, ordered the release of a man sentenced to the penitentiary for assault with intent to kill. The basis for this was his ruling that the probate courts had no jurisdiction in the matter. He further ruled that all appeals from justices of the peace must be made to his district court and not to the probate courts.\(^4\) The Deseret News stated that it "is likely to be attended with the


\(^2\)Ibid.

\(^3\)Ibid.

\(^4\)Deseret Evening News, October 17, 1870.
worst results."¹ They probably did not realize how true this was, for from this time on the federal judges did everything within their power to limit or put a stop to the territorial agencies.

Termination of Judicial Power

During the next four years, between 1870 and June 23, 1874, the Federal courts for the territory and the United States Supreme Court were kept busy deciding the ever-present problem of jurisdiction between the federal and territorial authorities. The Federal judges that were in office at this time, were better organized in their effort to eliminate the territorial officers. They seemed to have no plan for eliminating these officers, but they were better united than previous judges in this effort. This is borne out by the fact that prior to Chief Justice McKean's arrival, Justices Strickland and Hawley had both held that probate courts did not have criminal jurisdiction. Another example of this was the action of the illegally appointed United States District Attorney Baskin, who stated that he had resolved to "test the jurisdiction of the [probate] court, and with that purpose in view, filed a plea to the jurisdiction."² Thus, the one thing that united the Federal officials against the territorial agencies was the common desire to end these agencies.

¹Ibid., October 19, 1870.

During 1870, four of the major cases that were to determine the jurisdiction of the various offices were all tried before the Supreme Court for the Territory. The first of these cases occurred in May of 1870, in the case of J. Milton Orr vs. John D. T. McAllister on a writ of quo warranto. Milton Orr was the United States marshal and John D. T. McAllister was the Territorial marshal. The main issue of the case was whether McAllister had the right to act as marshal of the district courts trying territorial cases. Judge Wilson, who had not yet left the territory, ruled that Orr, the United States marshal, was the proper officer of the district courts and the Supreme Court. This ruling was to limit the function of the Territorial marshal's office to cases appearing before probate, and this function was further limited in December of that year when the Supreme Court of the Territory ruled against the probate courts. The McAllister case was appealed to the Supreme Court, which in December of the same year upheld the previous decision, making it final unless appealed to the United States Supreme Court.

During this same session of the Supreme Court, another case of quo warranto was appealed from the district court to the Supreme Court by Territorial Attorney General Zerubbabel Snow. This, like the McAllister case, was a question of jurisdiction concerning the proper officer of the district court for territorial business—whether United States Attorney Hempstead

\[1\text{History of the Bench and Bar of Utah (Salt Lake City, Utah: Interstate Press Assn., 1913), p. 28.}\]
or Attorney General for the Territory, Zerubbabel Snow. The Supreme Court, as in the prior case, held for the United States officers. This case was appealed to the United States Supreme Court, which reversed the judgment of the Territorial Supreme Court and stated that the Territorial marshal and the attorney general were properly appointed officers and were not in violation of any of the provisions of the Organic Act. This decision, however, was somewhat late, for it was ruled on in October of 1874, and about seven months later the United States Congress passed a law which made these offices void.

On September 19, 1870, a case was tried before Chief Justice McKean, which was also to be appealed to the United States Supreme Court. This was the case of Englebrecht vs. Clinton in which Judge McKean set aside the properly selected jury and appointed a packed jury which ruled in favor of Englebrecht. The defendants appealed to the Territorial Supreme Court where the verdict of the lower court was sustained. An appeal was taken to the United States Supreme Court which reversed the decision and ruled that:

The Organic Act authorized the appointment of an attorney and a marshal for the Territory, who may properly enough be called the attorney and marshal of the United States for the Territory; for their duties in the courts have exclusive relation to cases arising under the laws and constitution of the United States. The process for summoning jurors to attend such cases may be a process for the exercising of Jurisdiction of the Territorial courts of the United States; but the making of the lists and all matters connected with the designation of jurors are subject to the regulations of Territorial law. And this is especially true in cases arising,
not under any act of Congress, but the exclusively, like
the case in the record, under the law of the territory.

Upon the whole, we are of the opinion that the jury
in this was not selected and summoned in conformity with
the law, and that the challenge to the array should have
been allowed this opinion makes it unnecessary to consider
the other questions in the case.¹

This decision was to be a blow to the pride of Judge McKean,
and was to put him and the national administration in a bad
light, for he had been supported in his actions by President
Grant.²

The last of these major cases was the case of Ferris vs
Higley, in which the jurisdiction of the probate courts was put
to a test. The illegally-appointed District Attorney Baskin³
was instrumental in bringing this case before the Supreme
Court in the question of authority. During this same term
(1870) the Supreme Court ruled that the extra-probate juris­
diction of the probate courts was a violation of the Organic
Act. This ruling was appealed to the Supreme Court of the
United States, but it was not acted on until December of 1874.
The Supreme Court upheld the decision of the Territorial Supreme
Court.⁴ Its decision was probably based in conformity with the

¹Clinton v. Englebrecht, 80 U. S. 434.
²New York Times article as quoted in the Millenial
Star, XXXIV, pp. 297-298.
³Robert Baskin was illegally appointed in 1870 by
Judge McKean to replace District Attorney Hempstead, who had
resigned in protest to McKean's jury policies. The illegality
arises in the fact that the President and Congress only had the
right to appoint such officers. Baskin was replaced by George
Bates in 1871.
⁴Ferris v Higley, 87 U. S. 375.
Poland Laws which were passed in the previous June by the United States Congress. Because of delay in action on the case, the function of the probate courts of the territory was curtailed up to 1874, and after this time the probate courts were ruled to have no civil and criminal jurisdiction. Thus, in the winter of 1870, the Federal judges had scored a lasting victory, which was to find its way to Congress and eventually become a law.

During the legislative sessions of 1870-1871, the legislature, probably because of these decisions, would not appropriate funds to the courts on the grounds that they could not appropriate Territorial funds to the Federal courts to carry on their legal business. Due to the reluctance of the legislature, Judge McKean ran low on funds and had to dismiss his court during the March term of 1871, and stated to the jury that "because this court refuses to surrender itself into their hands, they refuse to pay your just allowance or to defray any of the expenses of this court." ¹

Between 1871 and the beginning of 1874, there was very little litigation in the courts in regard to the jurisdiction

¹Tullidge, p. 518. Whittney in quoting the New York Herald gives the reason why funds were withheld from the court. He [McKean] refused the recognition of the Territorial Marshal and Attorney [McAllister and Snow] as Shaffer did the Territorial Nauvoo Legion and its lieutenant-General. But the Judge [McKean] comes to grief for the moment. He held his court with the United States officers; but the United States treasury would not honor the Marshal's drafts for the expenses of the court, virtually acknowledging that the Mormon interpretation of the question is correct." Whittney, Vol. II, p. 571.
problem. Perhaps the two major events in relation to the courts in Utah were the arrest and trial of Brigham Young and the introduction into Congress of the Vorhees's Bill.

It seems that Judge McKean had not run out of tricks with which to antagonize the residents of Utah, for on October 3, 1871, he had Brigham Young arrested on an old 1852 statute which dealt with adultery and the lascivious cohabitation of unmarried people.¹ Brigham Young, being in poor health, asked for an extension of time, but it was denied him. He went to the southern part of the territory during the winter for his health, before the case was tried. After spending a short time in the south, he returned to Salt Lake City on October 2, 1872, to find that he was no longer charged with the petty charge of illegal cohabitation but with murder. It seems that Bill Hickman had confessed to a murder, and had involved Brigham Young, Hosea Stout, Wm. H. Kimball and Daniel H. Wells. Hickman had killed a Richard Yates in Echo Canyon, and had tried to save his own life by involving the above men. This, however, appears to have been another one of Judge McKean's attempts to persecute rather than prosecute. Brigham Young was placed under arrest in his own house. The charges failed to materialize, and a writ of habeas corpus that was issued on April 20 by Elias Smith, judge for Salt Lake County, effected the release of Brigham Young on April 25.² At this same time some of con-

¹Ibid., p. 528.
²Whitney, II, p. 689.
gressional legislation against the Territorial authority was beginning to appear. On April 11, 1872, Vorhee introduced his bill into Congress, which would give Federal Officers exclusive control over Territorial matters. This bill, however, did not materialize, but the Poland law which was similar was passed in 1874.

In 1874, the last of the litigation against the Territorial offices was decided. In the early part of 1874, two cases were decided by the Supreme Court for the Territory, which took away the last bit of civil authority that the probate courts had and overruled the acts of the Territorial legislature. The first of these was the case of Cast vs. Cast, a divorce case which was appealed to the Supreme Court on the grounds that the probate court did not have jurisdiction to grant the divorce. The Supreme Court for the Territory held that the divorce should be affirmed, but that the "Act in relation to 'Bills of Divorce' approved on March 6, 1852, which purports to confer such jurisdiction [is] void."¹ Thus the last bit of authority that the probate courts had concerning matters outside of probating wills and estates was taken away.

The second case was that of Benjamin Duncan and John D. T. McAllister. The facts of the case were simply that on February 16, 1874, the legislature had elected McAllister as Territorial marshal, and on March 3, Governor Woods, disregarded-
ing the legislature's acts, appointed Duncan as marshal. This case was brought before the Supreme Court for a final decision and it ruled for Duncan as the territorial marshal.\(^1\)

On January 5, 1874, the Poland Bill was introduced into Congress, which was the beginning of the end for the various territorial offices that were in dispute. On February 16, George Q. Cannon, the Territorial Delegate from Utah, opposed the bill and asked that an investigating commission be sent to Utah. He so strongly opposed the bill that he almost lost his seat in congress. On May 5, six days before the Poland Laws passed the house, the congressional debate concerned merely the fact that the travel fees of the marshal were the same as those of the sheriff.\(^2\) The rights of a people to have their own courts in which to try their cases were not considered.

On June 23, 1874, the Poland laws were passed, which restricted the probate courts to the settlement of wills and estates, and eliminated the Territorial marshal and attorney general.\(^3\) Thus the people were now at the mercy of the Federal officials, good or bad, who would be sent to the territory. Thus ended, after twenty-two years, an interesting chapter in the history of the Utah courts.

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\(^1\)Duncan v McAllister, 1 Utah 81.


\(^3\)U. S., Statutes at Large, XVIII, 253-256. See Appendix XIII for complete Act.
CHAPTER VI

SUMMARY AND CONCLUSION

The arrival of the Mormons in Salt Lake valley was the beginning of an interesting judicial history. The first in the valley were the ecclesiastical courts of the Latter-day Saint Church, which were to be the only courts until 1849. In 1849 there was a need for civil courts due to the influx of Gentile immigrants into the Salt Lake valley. From 1849 to 1851, these civil courts, made up of elected judges, in the newly formed State of Deseret, handled the litigation of the Gentiles and Mormons, although it was difficult to distinguish between them and the Mormon Church courts.

On September 9, 1850, Congress created the Territory of Utah, thus putting an end to the State of Deseret and its courts. The courts of the Territory from 1851 on were to have a contentious history. The first judges sent to Utah remained only a few short months and returned to the States without trying any cases. The remaining Federal Judge, Zerubbabel Snow, was forced to handle the litigation alone until new appointees arrived. Shortly after the departure of the first judges, a murder trial took place which was to be the start of the conflict concerning the question of which laws were to apply to the people of Utah—Federal or Territorial. It was decided
at this trial that if an offense were committed against the Territory, then the Territory was to have jurisdiction; but if an offense were committed against the Federal authority, it was a matter of Federal jurisdiction. Out of this case came a law respecting justifiable homicide, which still exists in Utah, one of the few states having such a law.

In 1852, several acts were passed by the Legislature respecting Territorial law enforcement offices and giving the probate courts civil and criminal jurisdiction. It is probable that Utah is one of the few States in America to ever give her probate courts so much jurisdiction and power. At the time of its enactment, it was felt that the act concerning the probate court was to be a help to the Federal courts rather than a competitor.

The probate courts did not encounter difficulty with the Federal courts until 1855 and 1856, when Judge Drummond was pressing for a decision to have the probate courts restricted in their authority. An apparent compromise was made with Judge Drummond in which charges against him for assault with intent to kill were dropped, on condition that he drop charges against the probate courts. The charges were dropped, and the probate courts survived their first real attack. Drummond's experience of being tried in a lower court was no doubt the cause of some of his bitterness. In 1856, he departed from the Territory. Due partially to his reports, an army was sent to Utah, bringing with it more judges, bent on subordinating the people of the Territory.
From 1858-1860, these appointees, Judges Eckles, Sinclair, and Cradlebaugh, all attacked the courts but never really made any rulings in regard to the court system while they sat as a Supreme Court. Had they been more unified in their efforts, they might have brought an end to the probate courts’ power fourteen years before this power finally ended. From 1860 to 1870, there was very little action on the part of the Federal Judges against the probate courts and the Territorial marshal and attorney.

In 1870 with Judges McKean, Strickland and Hawley on the bench, the probate courts came to an end. Whether there was a unified effort on the part of these judges is difficult to say, but there must have been something more than coincidence to bring about so much litigation all at one time against the probate courts and the territorially-appointed law officers. Due to this litigation, there was a flood of bills in Congress against this excessive authority on the part of the territorial appointees. On June 23, 1874, the Poland Laws were passed bringing to an end the offices of Territorial marshal and attorney general, and reverting the probate courts back to their original status as courts of settlement for estates and wills.

As was stated, when this extra authority was given to the probate courts in 1852, it was meant to be an aid to the Federal courts. But later it tended to become a buffer against excessive jurisdiction on the part of the Federal officials,
in that their power was equal to that of the Federal in problems relating to the Territory.

It is felt that these two courts, the district and the probate, could have functioned concurrently without any trouble in that it had done so during the ten years previous to their being restricted. Perhaps if there had been a little more compromise on both sides, they might have remained; but with the biases of the Federal officials and the stubbornness on the part of the Territorial residents, it could not help but come to an end.

In conclusion, it is felt that too little recognition is given this problem by Utah historians today. Prior to the Poland Laws, this problem occupied much of the courts' time, which if it had not been present, more of the courts' time would have been spent on the polygamy question. After the elimination of these courts, the Federal Judges did begin to spend more time on this vexing problem.
APPENDIX I

G. S. L. C. Dec. 27, 1847

We the High Council of the Great Salt Lake City, in the absence of any organized jurisdiction of the Territory, for the peace, welfare and good order of our community, proceed to enact the following laws for the government and regulation of the inhabitants of this city and valley for the time being, subject to the approval of the people.

Ordinance 1st, Concerning Vagrants

Whereas it is of the utmost importance that every man in our community use the utmost exertion to cultivate the earth in order to sustain himself and his family, in a few locations, so far from supplies, therefore, should any person or persons be convicted, before any acting judge or judges acknowledged by the people of said City and Valley, if idling away his or their time or neglecting in any manner to use the necessary exertions for the above purpose, it shall be the duty of said judge or judges to appoint two or more trustees, whose duty it shall be to take charge of all the property of the person or persons thus convicted, or such portion of the same as the judge or judges may deem necessary, and to hold the same in security for the support of himself or family of those depending upon his labors, to be held at the discretion of the judge or judges. And it shall be the further duty of said trustees to take into custody the person or persons thus convicted and to cause them to be industriously employed, the proceeds of which employment shall be held and applied in the same manner and for the same purpose as the property before mentioned.

And be it further ordained, that the Trustees be paid a reasonable compensation for their trouble out of the property taken from, or labor done by any person or persons convicted under this ordinance.

Ordinance 2nd, Concerning disorderly or dangerous persons and disturbers of the peace.

Any person convicted of violence on person or property, threatening, or riot shall be sentenced to receive a certain number of lashes on the bare back, not exceeding 39, or be fined in any sum not less than five dollars, nor exceeding five hundred
dollars, and shall give securities for his good behavior, at the discretion of the judge or judges.

Ordinance 3rd, Concerning Adultery and Fornication.

Any person or persons convicted of the Crime of Adultery or Fornication, shall be sentenced to receive a certain number of lashes on the bare back, not exceeding 39, and be fined in the sum not exceeding one thousand dollars, at the discretion of the judge or judges.

Ordinance 4th, Concerning Stealing, Robbing, Housebreaking or maliciously Causing the destruction of fire of any property.

Any person or persons convicted of any of said crimes, shall be sentenced to receive a number of lashes on the bare back, not exceeding 39, and to restore four fold, and to give security for their good behavior in (the) future at the discretion of the judge or judges.

Ordinance 5th, Concerning Drunkenness, and etc.

Any person or persons convicted of Drunkenness, Cursing, Swearing, foul or indecent language, unnecessary firing of guns, within or about the Forts, unusual noises, or in any other way disturbing the quiet or peace of the community, shall be fined any sum not less than 25 dollars. The Above Ordinances to take effect from and after the first day of January, A.D. 1848.

Done in behalf of the High Council and People of Great Salt Lake City.
APPENDIX II

ARTICLE 4. OF THE JUDICIARY

Sec. 1. The Judicial power shall be vested in a Supreme Court, and such Inferior Courts, as the General Assembly shall from time to time establish.

Sec. 2. The Supreme Court shall consist of a Chief Justice, and two Associates, either two of whom shall be a Quorum to hold Courts.

Sec. 3. The Judges of the Supreme Court shall be elected by vote of both houses of the General Assembly, and shall hold their Courts at such time and place as the General Assembly shall direct; and hold their offices for the term of four years, and until their successors are elected and qualified. The Judges of the Supreme Court, shall be Conservators of the peace throughout the powers, as shall be prescribed by law.

Sec. 4. The style of all process shall be, the STATE OF DESERET, and all prosecutions shall be in the name, and by the authority of the State.
APPENDIX III

AN ORDINANCE TO PROVIDE FOR THE ORGANIZATION OF THE JUDICIARY
OF THE STATE OF DESERET

Passed January 9, 1850

Sec. 1. Be it ordained by the General Assembly of the state of Deseret, that a Supreme Court shall be organized, to consist of one Chief Justice, and two Associate Justices, either two of whom shall form a quorum to do business.

Sec. 2. The Chief Justice shall be elected by joint vote of both Houses of the General Assembly; and shall take an oath or affirmation to support the Constitution of the United States, and of this state, and faithfully and impartially perform and discharge the duties of their office, according to the best of their powers and abilities, and each file a bond in the office of the Secretary of State, conditioned for the faithful and impartial performance of the duties of said office, with food and approved securities, in a sum of not less than one thousand dollars, and not exceeding ten thousand dollars, at the discretion of the Secretary of State, which bond may be increased whenever he shall deem it necessary.

Sec. 3. These Judges shall hold their office for the term of four years and until their successors are elected and qualified, and whenever a vacancy shall occur, by death, resignation, or removal from the limits of the State, or otherwise, the Executive shall have power to fill such vacancy by appointment; and the person so appointed shall have full power, after filing a bond and taking the oath of office as aforesaid, to act as a Justice of the Supreme Court, until the next meeting of the General Assembly, when said vacancy shall be filled, as provided for in the second section of this Ordinance.

Sec. 4. They shall have appellate jurisdiction in all cases of Law and Equity which may have been tried by the Inferior courts, and have original jurisdiction over all civil cases where the sum in dispute shall exceed one thousand dollars, (provided the Clerk of said Court shall not enter upon his docket, any civil suit by appeal or otherwise, without first receiving a docket fee of twenty dollars, which sum shall be paid into the Public Treasury,) and in cases where the officers of the State are accused of neglect of duty, corruption, bribery, etc.
Sec. 5. They shall also have jurisdiction for the correction of errors, in all judicial proceedings.

Sec. 6. Whenever any or either of the Justices of the Supreme Court shall be accused of corruption, bribery, or wilful neglect of duty, the same shall be presented to the President of the Senate, and if he shall consider there is sufficient cause of complaint he or they shall be tried before the Senate, and if found guilty, shall be dismissed from office, and subject to fine or imprisonment as the Senate may deem necessary; and shall also be liable to civil suit for all damages sustained.

Sec. 7. The Supreme Court shall appoint a Clerk of said Court, who shall file a bond in the sum of not exceeding ten thousand dollars, with approved securities, in the office of the Secretary of State, and take an oath of office; whose duty it shall be to keep a faithful record of all the proceedings of said Court, in a book provided for that purpose, to issue all writs and processes that may be ordered or issued by said Court, and pay over and account for all monies that shall come into his hands by virtue of his office, and do such other duties as the Court from time to time shall direct, and shall continue in office during the pleasure of the Court.

Sec. 8. The Secretary of State shall provide said Court with an official Seal, at the public expense, which shall contain the words "Supreme Court, State of Deseret," and the Clerk shall place said Seal on all processes or documents issued by the Court.

Sec. 9. All persons accused, either in civil or criminal cases, shall have the privilege of being heard themselves, or by proxy, and shall have trial by Jury if they choose. It shall be the duty of the Court to grant a speedy trial, to issue compulsory process for witnesses, and in no case suffer technicalities to frustrate the ends of Justice. The Court or either of its Judges, are to grant writs of Habeas Corpus, and hear and determine the same, on the merits of the case.

Sec. 10. The Supreme Court shall hold annual sessions, at the Seat of Government, on the first Monday in November, and such special sessions at such time and place throughout the state, as the press of Judicial business, in their opinion, may require.

Sec. 11. The Governor shall hold power to appoint a State's Marshal, whose term of office shall continue four years, or during the pleasure of the Governor, and until his successor is appointed and duly qualified, and the said Marshal, when duly qualified, shall have power to appoint, by and with consent and
approval of the Governor one or more Deputy Marshals, as the necessity of the case may require.

Sec. 12. It shall be the duty of the Marshal and Deputy Marshal, to take an oath of office, and each file a bond with approved securities, in a sum not exceeding twenty-five thousand dollars, in the office of the Clerk of the Supreme Court, for the faithful discharge of his official duties, which bond or bonds may be increased at the discretion of the Executive, or the Judges of the Supreme Court.

Sec. 13. It shall be the duty of the Marshal, with his Deputies, to execute all orders, or processes, and decrees of the Supreme Court, and such other duties, as the Executive shall direct or may be required by law.

Sec. 14. An Attorney General shall also be elected by joint vote of both Houses of the General Assembly, whose term of office shall be four years, and until his successor is elected and qualified.

Sec. 15. It shall be the duty of the Attorney General, before entering upon his duties, to take an oath of office, and give bond and security to be approved by the Secretary of State, and filed in his office.

Sec. 16. It shall be the duty of the Attorney General to prosecute in behalf of the State, individuals accused of crime, attend to legal business before the Court wherein the State is a party; be the Counsellor of the Executive whenever required by him; and generally to do and perform all other business pertaining to his office, and such other duties as shall be required of him by the Executive, or by legislative enactment.

Sec. 17. There may also be elected a Prosecuting Attorney for each organized County, whenever the necessity of the people or public good requires it, who shall be elected as provided for the Attorney General in the first section of this Ordinance, and for the same term, and take an oath of office, and give bond and security to be approved by the Clerk of the County Court, and filed in his office.

Sec. 18. It shall be the duty of the Prosecuting Attorneys to attend to legal business before the Courts in their respective Counties wherein the State is a party, prosecute (sic) individuals accused of crime, and generally to do and perform all duties pertaining to their office.

Sec. 19. A Court shall be formed in each County, consisting of one Chief Justice, and two Associate Justices, (whenever the necessity of the inhabitants of said County
require it,) either two of whom shall form a quorum to do business. The Chief Justice shall be elected by a joint vote of the General Assembly, and shall hold office four years. The two Associate Justices shall be elected by the people of said County, also for the term of four years; each of whom shall hold their office until their successors are elected and qualified, and they shall take an oath of office and file a bond in the office of the Clerk of the Supreme Court, with approved securities, for the faithful and impartial discharge of their official duties, in a sum not exceeding ten thousand dollars each, to be approved of by said Clerk, which may be increased when the Judges of the Supreme Court may deem it necessary.

Sec. 20. In case of bribery or corruption of either of the aforesaid Justices, any one of whom may be tried before the Supreme Court, or the County Court of an adjoining County; and if found guilty shall be dismissed from office, and subject to fine or imprisonment, as the Court may deem necessary; and shall also be liable to civil suits for all damages sustained.

Sec. 21. At the expiration of two years after the first election of Associate Justices, the Junior Justice's term of office shall expire, and his place shall be filled by an election as herein contemplated, that one of the Associate Justices may be elected every two years.

Sec. 22. The County Court shall have jurisdiction over all civil and criminal cases arising in said county, on original cases exceeding one hundred dollars, and on appeals from Justice's Courts.

Sec. 23. It shall be the duty of the County Court, of either of its Judges, whenever application is made, and in their judgements the nature of the case requires it, to issue writs of Habeas Corpus, to try and determine the same on the merits of the case, and administer justice in all cases regardless of technical forms of law.

Sec. 24. They shall appoint a Clerk of the Court, who shall qualify, and give bonds same as the Judges of said Court, whose duty it shall be to keep and affix a seal to all papers issuing therefrom; it shall also be his duty to keep a record of all proceedings of said court, issue process, and make and deliver transcripts in cases of appeals, and do such other duties as the Court shall direct.

Sec. 25. The Clerk of the County Court shall not enter a suit, either by appeal or otherwise, (except in criminal cases,) upon his docket, without first receiving a "docket fee" of ten dollars, which sum shall be paid into the Public Treasury.
Sec. 26. It shall be the duty of said Court to hold annual sessions on the first Monday in October, and such special sessions as in their judgement, the speedy execution of justice and public good may require.

Sec. 27. There shall also be one Sheriff for each County, whose term shall be four years, who shall be the chief Executive officer of the County, in which he is elected, and shall execute the orders and decrees of the County Court; he shall take an oath of office and file a bond with approved securities, not exceeding ten thousand dollars, in the office of the County Clerk, which bond shall be approved by the Court, and increased when the Court shall deem proper.

Sec. 28. Each Sheriff shall have authority to appoint such number of deputies, as may be necessary to perform the business of said County, who shall be approved by the County Court.—Each deputy shall take an oath of office, and file a bond as the Sheriff.

Sec. 29. Each Precinct in this State may elect one Justice of the Peace, and two constables; and Great Salt Lake City Precinct four Justices of the Peace, and eight constables; (and the same may be increased in any Precinct in this State, whenever the public good require it;) whose term of office shall be two years.

Sec. 30. It shall be the duty of every Justice of the Peace, to examine strictly and faithfully into the merits and demerits of all civil and criminal cases which may come before him, and to execute justice without respect to persons or favor, or the technicalities of the law, preserve the public peace, sit in judgement on all cases referred to him, and keep a true record of all proceedings had before him, and in case of appeal, to transmit a copy of the same to the Clerk of the Court to which the appeal is made.

Sec. 31. Each Justice of the Peace and constable shall take an oath of office, and shall file a bond with approved securities, of not less than one, nor exceeding ten thousand dollars, in the office of the County Court in which he resides, for the faithful discharge of his official duties.

Sec. 32. Any Justice of the Peace may officiate a Coroner, when occasion may require by holding inquests upon the bodies of such persons as may be found dead, or may have died suddenly, or by violence, or in any manner that may create suspicion of crime; it shall be his duty to take in writing the evidence that may be abducted in such cases, also his own decision thereon, the names of several persons present at the investigation, and file the same in the Clerk's office of
the County Court; and he shall have authority to summon to his assistance such persons as he may deem necessary to hold such inquest, and dispose of, or inter said body, as he shall think proper.

Sec. 33. A docket fee of one dollar shall be paid to each Justice of the Peace, for each case coming before him, before he commences any suit by civil process, which sum shall be paid into the Public Treasury.

Sec. 34. Any Justice of the Peace may issue compulsory process for the attendance of witnesses, and may admit as evidence any dispositions taken before any Justice of the Peace, Judge, or Clerk of Court; who shall seal up and transmit the same to the Court where the case is pending; provided that both parties are duly notified of the time and place of taking such depositions, and had the privilege of being present themselves, or by proxy, if they choose; all such depositions must be taken upon oath or affirmation.

Sec. 35. It shall be the duty of each and every Justice of the Peace, to punish by fine not exceeding one hundred dollars at his discretion, any person or persons who shall bring before him a vexatious lawsuit, though malice or private pique against the defendant; all fines so collected shall be paid into the Public Treasury.

Sec. 36. When any Justice of the Peace shall be found guilty of receiving a bribe, of using partiality, or knowingly giving an unjust decision; he shall be dismissed from office, and fined or imprisoned at the discretion of the County Court, and he shall also be liable for civil suits for damages.

Sec. 37. In all cases where civil suit is commenced before any Justice of the Peace, said Justice shall require the plaintiff to enter into bonds to be approved by the Justice, for all costs that may arise for witnesses, constables, and costs of Courts; the witnesses shall be allowed the current price of labor per day, that they would have earned if they had been at home, and expenses, which bond shall be held by the Justice of the Peace. And on the termination of any suit, the Justice of the Peace shall decide whether the plaintiff or defendant shall pay said costs, or what portion shall be paid by each, according to the Justice of the case.
APPENDIX IV

AN ORDINANCE, in relation to county courts.

Passed, January 6, 1851

Sec. 1. Be it ordained by the General Assembly of the State of Deseret, that the county court shall hold, in the respective counties, a semi-annual session, commencing the first Monday of March next.

Sec. 2. The county shall, at their March term or session, appoint judges of election, and jurors for the then current and ensuing year, to hold over until their successors are appointed and qualified. The grand inquest for the county, for the next two ensuing regular sessions, and the petit jurors the next ensuing session; and the county court shall, at their October term, select the petit jurors for the next ensuing March session.

Sec. 3. It shall be the duty of the county court, at their March term to take into consideration the situation of the affairs of the county; to settle with the commissioner, and the assessor and collector; assess the tax for the year ensuing, and generally to do and perform the county business for the year: nevertheless, from and after the first term of said court, to be holden on the first Monday of March next, they shall have power to try cases, the same in all respects whatever, as is now provided in the act concerning the judiciary, passed January 9, 1850.

Sec. 4. It shall be the duty of the county clerk to settle with the commissioner, assessor and collector; and to show a correct exhibit of the fiscal affairs of the county, at the beginning of the March term; and to facilitate said settlement of the fiscal affairs of said county, it shall be the duty of all officers of said county, in any wise handling the public funds, and all persons having claims against said county, on or before the first Monday of October in each year; and full and ample reports on or before the first Monday in December in each year.

Sec. 5. The county clerk shall make out and deliver into the hands of the county commissioner, abstracts from the
assessor and collector's book of the road tax in their respective counties, in a line opposite the names against whom the same may be assessed taking his receipt thereof; and it shall be the duty of the said commissioner to furnish one copy of the same to each supervisor of roads, of all the names in their respective districts.

Sec. 6. The county courts in their respective counties, from and after the current year, shall assess the county tax; and the same together with the State tax, shall be assessed and collected by the county assessor and collector -- the county tax to be paid into the county assessor and collector shall make a full and concise report, and return the same to the Auditor of Public Accounts, on or before the first Monday of November in each year; and shall moreover pay into the State treasury, all State funds collected by him semi-annually, on or before the first Monday in November as aforesaid; and on or before the first Monday in March in each year.

JEDEDIAH M. GRANT,
Speaker of the House of Representatives.

HEBER C. KIMBALL,
Speaker of the Senate.

Approved, Jan. 9, 1851, BRIGHAM YOUNG, Gov.

Thomas Bullock, Clerk.
APPENDIX V

CRIMINAL LAWS OF THE STATE OF DESERET

Passed, January 16, 1851

Sec. 1. Be it ordained by the General Assembly of the State of Deseret, that if any person or persons shall, with premeditated intent, unlawfully kill a human being, in this State, they shall be deemed guilty of murder, and on conviction of the same, before a court having jurisdiction thereof, shall suffer death.

Sec. 2. Be it further ordained, that if any person or persons shall be accessory to murder before the fact, he or they shall, on conviction thereof, suffer as the principal.

Sec. 3. Be it further ordained, that if any person or persons shall be accessory to murder after the fact, by aiding the accused in any manner to escape the ends of justice, they shall be deemed guilty of a high misdemeanor, and shall be fined, or imprisoned, or both, at the discretion of the court.

Sec. 4. Be it further ordained, that if any person or persons shall unlawfully kill a human being, in this State, without malice, either expressed or implied, during a sudden heat of passion, they shall be guilty of manslaughter, and on conviction thereof, be punished by imprisonment, or fine, at the discretion of the court.

Sec. 5. Be it further ordained, that if any person or persons shall administer any drug, medicine, herb, root, acid, or any thing possessing poisonous qualities, with criminal intent, whereby any person or persons shall be poisoned thereby, and death ensues; they shall be guilty of murder, and on conviction thereof, shall suffer death.

Sec. 6. Be it further ordained, that if any person or persons shall administer poison as prescribed in the foregoing section, with criminal intent, and death does not ensue; they shall be deemed guilty of a high misdemeanor, and on conviction thereof, shall be fined, or imprisoned, or both, as the court may direct.
Sec. 7. Be it further ordained, that if any doctor, or physician, apothecary, or any other person, shall give, communicate, or administer; or by their influence, counsel, advice, persuasion, suggestion, or by any means whatsoever, give or cause to be given, by themselves directly or indirectly, or through the aid or medium of any other person or persons agency or means whatsoever, any deadly poison, whether animal, mineral, or vegetable; such as quicksilver, arsenic, antimony, or any mercurial, arsenical, or antimonial preparations therefrom; or cicuta, deadly night-shade, henbane, opium, or any of the diversified preparations therefrom; or any drugs, medicines, and other preparations, such as chloroform, either, exhilarating gas, calculated in their nature to destroy sensibility, from any other poisonous minerals or vegetables, to any citizen of the State of Deseret, whether sick or well, old or young, man, woman, or child, under pretence of curing disease, or from any other real or pretended cause, influence, argument or from any design or purpose whatsoever, without first explaining, fully, definitely, critically, simply, and unequivocally to the patient, and surrounding friends and relatives, such as father, mother, husband, wife, children, guardian, or others as the case may be, in plain, simple, English language the specific nature, operation and design of said poison or poisonous preparation, about to be, or intended to be given, and procuring the unequivocal approval, approbation and consent of the patient, if of mature years and sound mind, and of the parents, guardians, or other friends, to the giving, administering, or communicating said poison so intended; said doctor, physician apothecary, person or persons so administering said poison, without the full and free assent of said patient, and friends, shall be adjudged guilty of a high misdemeanor, and be punishable in any sum not less than one thousand dollars, and be imprisoned or confined to hard labor for any time not less than one year; and if the death of the patient or person, so receiving the poison as above specified, shall follow the taking the same, without being made acquainted with the nature thereof; then the doctor, physician, apothecary, person or persons so giving or causing to be given said poison, shall be adjudged guilty of manslaughter, or murder as the case may be, by any court having jurisdiction, and be punished according to ordinance for such crimes:—

Provided, that the administration of poisons, as specified in the foregoing section, and the penalties thereof, shall not attach to doctors, physicians, and apothecaries, having their own drugs, poisons, and medicines, accompanying, and administering to companies, and individuals traveling through the State, the same not being citizens of the State; but all such doctors and companies so traveling, may administer to, and receive of their own drugs, poisons, or medicines, with good intent, on their own responsibility.
Sec. 8. Be it further ordained, that when the killing of a human being takes place unintentionally, as by accident; the slayer being engaged in doing a lawful act, the court, upon conviction of the fact, shall discharge the prisoner from further prosecution.

Sec. 9. Be it further ordained, that, if any person or persons in the lawful defence, of their own life, or limb, or family, or their liberty, or his or their property, or in the defence of any public property, shall unavoidably take the life or lives of any person or persons, on proof of the same before the court; he, she, or they, shall be discharged from further prosecution.

Sec. 10. Be it further ordained, that when any person shall be found guilty or murder, under any of the preceding sections of this ordinance, and sentenced to die, he, she or they shall suffer death, by being shot, hung or beheaded.

Sec. 11. Be it further ordained, that, when any person or persons shall be found guilty of murder, and sentenced to die, as the penalty of that offence, by any court in this State having jurisdiction; the execution of the sentence shall be deferred, until a transcript of the proceedings and decision of said court, shall be furnished the executive of the State, and upon the acknowledgment of the receipt of the same to the clerk of the court having framed the judgment, and the acknowledgment of the same shall not be attended with a reprieve, commutation, or pardon; then, and in that the culprit shall suffer death, as the court may have directed.

Sec. 12. Be it further ordained, that if any person or persons shall, with criminal intent, set fire to, or cause the same to be done, to any building of any description, or to any fence, rick of grain, or hay, wagon, boat, vessel, raft, bridge or any description of property whatever, they shall be deemed guilty of a high misdemeanor, and upon conviction thereof he, she, or they, shall be fined or imprisoned, or both, at the discretion of the court; and, if any person or persons shall set fire to any prairie or kanyon of timber, they shall, on conviction thereof, be guilty of a high misdemeanor, and shall be adjudged to pay all damages accruing thereby, and be fined or imprisoned, or both, at the discretion of the court.

Sec. 13. Be it further ordained, that if any person or persons shall unlawfully break into, or enter the yard or dwelling of any person, or into their enclosure, or wagon, boat, vessel, or tent, with a criminal intent of any kind; they shall be fined or imprisoned, or both, at the discretion of the court.
Sec. 14. Be it further ordained, that if any person shall swear falsely, with evil design, pertaining to any case in issue before any court, on conviction thereof, they shall be deemed guilty of perjury; and he or she shall be fined or imprisoned, or both, as the court may direct; and if any person or persons shall hire, or cause by any means whatsoever, any person to swear falsely in any case in issue before any court; they shall, on conviction thereof, be deemed guilty of perjury, and shall suffer the same penalty.

Sec. 15. Be it further ordained, that if any person or persons shall commit a forgery, by making or altering any instrument of writing, or signature, or bank note, to the prejudice or injury of another, he, she, or they, on conviction thereof, shall be fined or imprisoned, or both, as the court may direct.

Sec. 16. Be it further ordained, that if any person or persons shall make any spurious coin, of any kind, or shall knowingly have it in possession with an intent to pass, or shall be accessory to the same, or shall knowingly pass any counterfeit or illegal coin, to the injury of any person or persons, they shall, on conviction thereof, suffer fine and imprisonment, as the court may direct.

Sec. 17. Be it further ordained, that if any person shall fight a duel in this state, or shall go beyond the limits of the State, for the purpose of fighting a duel, and death shall ensue in consequence thereof, to either party; the surviving party shall be deemed guilty of murder, and punished accordingly.

Sec. 18. If any person in this State, shall send, accept, or knowingly bear a challenge for a duel, or meet for the purpose of fighting a duel, or be accessory thereto, or leave the State for that purpose, being residents of this State, shall, on conviction thereof, be deemed guilty of a high misdemeanor, and shall be fined or imprisoned, or both, at the discretion of the court.

Sec. 19. Be it further ordained, that if any person or persons shall swear, by the name of God, or Jesus Christ, in any manner using their names profanely, shall, for each offence, pay the sum of not less than five dollars, or be imprisoned at the discretion of the court.

Sec. 20. Be it further ordained, that if any two or more persons shall assemble themselves together, in any disorderly manner, and disturb the peace, or molest the persons or property of any individual, or any passer by, or attempt the same; they shall be arrested forthwith by any of the officers of this State, or by any citizen if no officer is present, and
they shall be deemed guilty of riot, and, on conviction thereof, be fined or imprisoned at the discretion of the court.

Sec. 21. Be it further ordained, that for an illegal trespass on the rights of another, the person so offending, on conviction thereof, shall be bound to make full restitution, and be fined or imprisoned, or both, at the discretion of the court.

Sec. 22. Be it further ordained, that if any person or persons shall have, or attempt to have, a sexual intercourse with any of the brute creation, on conviction thereof, they shall be deemed guilty of a high misdemeanor, and be fined or imprisoned, or both, at the discretion of the court.

Sec. 23. Be it further ordained, that if any man or boy shall have, or attempt to have, any sexual intercourse with any of the male creation, on conviction thereof, they shall be deemed guilty of Sodomy, and be fined or imprisoned, or both, as the court may direct.

Sec. 24. If any man shall have sexual intercourse with any female not his wife, or shall seduce any female; or any person being accessory to the same, shall, on conviction thereof be subject to imprisonment and hard labor not exceeding five years, and private damages, and a fine not exceeding five thousand dollars, at the discretion of the court; and any female seducing, or unlawfully cohabiting with a male, shall receive the same punishment.

Sec. 25. Be it further ordained, that if any man or boy shall force a woman or girl, to a sexual intercourse, or attempt the same with them, on conviction of the fact to the court, he shall be fined or imprisoned, or both, as the court may direct.

Sec. 26. Be it further ordained, that if any person or persons shall use any means by which an untimely birth of any child shall be had, or any pregnant woman shall be delivered, by which the death of one or either may be produced, unless the same shall be proven to have been done for the purpose of preserving the life of the mother, they shall be deemed guilty of murder, and upon conviction thereof, suffer the penalty as provided in the first section of this ordinance.

Sec. 27. Be it further ordained, that if any person or persons shall commit a robbery, by forcibly taking from the possession of another, any species of property, they shall, on conviction thereof, be fined or imprisoned, or both, at the discretion of the court.
Sec. 28. Be it further ordained, that if any person or persons shall steal any species of property whatever, or be accessory thereunto, he, she, or they shall, on conviction thereof, pay four fold, and be fined or imprisoned, or both, at the discretion of the court.

Sec. 29. Be it further ordained, that if any person or persons shall assault in any manner whatsoever, any person, or strike the same with an intent to maim them in any manner, or injure any person, they shall, on conviction thereof, pay all damages sustained, and be fined or imprisoned, or both at the discretion of the court.

Sec. 30. Be it further ordained, that if any officer in this State shall accept any bribe, by which he becomes a delinquent in the discharge of his duty, on conviction thereof, he shall forfeit his office, and ever after be incapacitated to hold any office in this State; and be fined or imprisoned, or both, at the discretion of the court.

Sec. 31. Be it further ordained, that if any person shall attempt to take forcibly any person from this State into another illegally, he shall, on conviction thereof, be fined or imprisoned, or both, at the discretion of the court.

Sec. 32. Be it further ordained, that if any person shall, through malice or revenge, cause any person to be illegally imprisoned, they shall, on conviction thereof, pay all damages to the person so imprisoned, and be fined or imprisoned, or both, at the discretion of the court.

Sec. 33. Be it further ordained, that if any person or persons shall, by deception, defraud another out of any money or species of property, they shall, on conviction thereof, be liable to restore four fold, and be fined or imprisoned at the discretion of the court.

Sec. 34. Be it further ordained, that the foregoing ordinance be in force from and after its passage.

JEDEDIAH M. GRANT,
Speaker of the House of Representatives.

HEBER C. KIMBALL,
Speaker of the Senate.

Approved, Jan. 19, 1851, BRIGHAM YOUNG, Gov.

Thomas Bullock, Clerk.
APPENDIX VI

AN ORDINANCE, for establishing Probate Courts, and defining the duties thereof.

Sec. 1. Be it ordained by the General Assembly of the State of Deseret, that a court of probate shall be organized in each county of this State, and consist of one judge, who shall be elected by joint vote of both Houses of the General Assembly, for the same time, and for the same term, as the chief justice for the county courts; and shall take the oath of office, and file a bond in the office of the clerk of the supreme court, for the faithful performance of his official duties, with approved securities, in the sum of ten thousand dollars; which bond may be increased when the court shall deem it necessary.

Sec. 2. The judge of probate shall have power to take the probate of wills, and grant administer of the estate, of all deceased persons, who were at the time of their decease, inhabitants of, or residents in the same county, and of all who die without the State or county, leaving an estate within such county; and also to appoint guardians to minors, and others, under guardianship.

Sec. 3. The judge of probate shall have jurisdiction of all matters relating to the settlement of the estates of such deceased persons, minors, and others, under guardianship.

Sec. 4. Judge of probate shall have power to issue all warrants and processes necessary to carry into effect the powers granted in this ordinance.

Sec. 5. It shall be the duty of a sheriff, deputy, or constable, to serve and execute all warrants and processes, to them directed, by the judge of probate of the county in which the officer resides.

Sec. 6. Each judge of probate shall make out transcripts in case of appeals, and a record in books kept for that purpose, all the orders and decrees of court; and also all wills proved in court, with the probate thereof; all letters testamentary and of administration, and all warrants, reports, returns, accounts, and bonds; and all other judicial proceedings of the court, which ought to be recorded.
Sec. 7. The supreme court shall be the supreme court of probate, and have appellate jurisdiction of all matters determinable by the respective judges of probate.

Sec. 8. Any person aggrieved by any order, denial, sentence, or decree of any judge or probate, may appeal therefrom to the supreme court; provided that such appeal is claimed, and notice thereof is given at the probate office, within twenty days from the date of the proceedings appealed from.

Sec. 9. After an appeal is claimed, and notice thereof given to the probate officer, all further proceedings in pursuance of the order, sentence, or decree appealed from, shall cease until the determination of the supreme court of probate shall be had thereon; provided that nothing herein contained shall be so construed as to hinder the disposal, or otherwise securing of perishable property.

Sec. 10. Said court shall hold a session at the county seat of their respective counties, on the first Monday of each month.

Sec. 11. The chief justice of each county may be appointed probate judge for their respective counties.

JEDEDIAH M. GRANT,
Speaker of the House of Representatives.

HEBER C. KIMBALL,
Speaker of the Senate.

Approved, Jan. 19, 1851, BRIGHAM YOUNG, Gov.

Thomas Bullock, Clerk.
APPENDIX VII

CHAP. LI.--An Act to establish a Territorial Government for Utah.

September 9, 1850.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled, That all that part of the territory of the United States in-
cluded within the following limits, to wit: bounded on the
west by the State of California, on the north by the Territory
of Oregon, and on the east by the summit of the Rocky Mountains,
and on the south by the thirty-seventh parallel of north lati-
tude, be, and the same is hereby, created into a temporary
government, by the name of the Territory of Utah; and, when
admitted as a State, the said Territory, or any portion of the
same, shall be received into the Union, with or without slavery,
as their constitution may prescribe at the time of their admis-
sion: Provided, That nothing in this act contained shall be
construed to inhibit the government of the United States from
dividing said Territory into two or more Territories, in such
manner and at such time as Congress shall deem convenient and
proper, or from attaching any portion of said Territory to any
other State or Territory of the United States.

Sec. 2. And be it further enacted, That the executive
power and authority in and over said Territory of Utah shall
be vested in a governor, who shall hold his office for four
years, and until his successor shall be appointed and quali-
fied, unless sooner removed by the President of the United
States. The governor shall reside within said Territory, shall
be commander-in-chief of the militia thereof, shall perform the
duties and receive the emoluments of superintendent of Indian
affairs, and shall approve all laws passed by the legislative
assembly before they shall take effect; he may grant pardons
for offences against the laws of said Territory, and reprieves
for offences against the laws of the United States, until the
decision of the President can be made known thereon; he shall
commission all officers who shall be appointed to office under
the laws of the said Territory, and shall take care that the
laws be faithfully executed.
Sec. 3. And be it further enacted, That there shall be a secretary of said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first day of December in each year, to the President of the United States, and, at the same time, two copies of the laws to the Speaker of the House of Representatives, and the President of the Senate, for the use of Congress. And in the case of the death, removal, resignation, or other necessary absence of the governor from the Territory, the secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

Sec. 4. And be it further enacted, That the legislative power and authority of said Territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and House of Representatives, giving to each section of the Territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of the district for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the Territory to be taken, and the first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected having the highest number of votes in each of said Council districts for members of the Council, shall be declared by the governor to be duly elected to the Council; and the person or persons authorized to be elected having the highest number of votes for the House of Representatives, equal to
the number to which each county or district shall be entitled, shall be declared by the governor to be duly elected members of the House of Representatives. Provided, That in case of a tie between two or more persons voted for, the governor shall order a new election to supply the vacancy made by such a tie. And the persons thus elected to the legislative assembly shall meet at such place, and on such day, as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly. Provided, That no one session shall exceed the term of forty days.

Sec. 5. And be it further enacted, That every free white male inhabitant above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly. Provided, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, including those recognized as citizens by the treaty with the republic of Mexico, concluded February second, eighteen hundred and forty-eight.

Sec. 6. And be it further enacted, That the legislative power of said Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect.

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 offices.

Sec. 8. And be it further enacted, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said Territory.

Sec. 9. And be it further enacted, That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in justices of the peace. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually, and they shall hold their offices during the period of four years. The said Territory shall be divided into three judicial districts, and a District Court shall be held in each of said districts by one of the justices of the Supreme Court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the Probate Courts and justices of the peace, shall be as limited by law:

Provided, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction. Each District Court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said District Courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court shall trial by jury be allowed in said court. The Supreme Court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said Supreme Court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars,
except only that, in all cases involving title to slaves, the
said writs of error appeals shall be allowed and decided
by the said Supreme Court, without regard to the value of the
matter, property, or title in controversy; and except, also,
that a writ of error or appeal shall also be allowed to the
Supreme Court of the United States, from the decisions of the
said Supreme Court created by this act, or by any judge thereof,
or of the District Courts created by this act, or of any judge
thereof, upon any writ of habeas corpus involving the question
of personal freedom; and each of the said District Courts shall
have and exercise the same jurisdiction in all cases arising
under the Constitution and laws of the United States as is
vested in the Circuit and District Courts of the United States;
and the said Supreme and District Courts of the said Territory,
and the respective judges thereof, shall and may grant writs
of habeas corpus in all cases in which the same are granted by
the judges of the United States in the District of Columbia;
and the first six days of every term of said courts, or so
much thereof as shall be necessary, shall be appropriated to
the trial of causes arising under the said Constitution and
laws; and writs of error and appeal, in all such cases, shall
be made to the Supreme Court of said Territory, the same as
in other cases. The said clerk shall receive in all such
cases the same fees which the clerks of the District Courts
of Oregon Territory now receive for similar services.

Sec. 10. And be it further enacted, That there shall
be appointed an attorney for said Territory, who shall con­
tinue in office for four years, unless sooner removed by the
President, and who shall receive the same fees and salary as
the attorney of the United States for the present Territory
of Oregon. There shall also be a marshal for the Territory
appointed, who shall hold his office for four years, unless
sooner removed by the President, and who shall execute all
processes issuing from the said courts, when exercising their
jurisdiction as Circuit and District Courts of the United
States: he shall perform the duties, be subject to the same
regulation and penalties, and be entitled to the same fees as
the marshal of the District Court of the United States for the
present Territory of Oregon; and shall, in addition, be paid
two hundred dollars annually as a compensation for extra ser­
vices.

Sec. 11. And be it further enacted, That the gover­
nor, secretary, chief justice and associate justices, attorney
and marshal, shall be nominated, and, by and with the advice
and consent of the Senate, appointed by the President of the
United States. The governor and secretary to be appointed as
aforesaid shall, before they act as such, respectively, take
an oath or affirmation, before the district judge, or some
justice of the peace in the limits of said Territory, duly
authorized to administer oaths and affirmations by the laws now
in force therein, or before the chief justice or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation, before the said governor or secretary, or some judge or justice of the peace of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified and recorded, in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs. The chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars. The secretary shall receive an annual salary of eight hundred dollars. The said salaries shall be paid quarterly, at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for twenty miles' travel, in going to and returning from the said sessions, estimated according to the nearest usually travelled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the governor, to defray the contingent expenses of the Territory. There shall also be appropriated, annually, a sufficient sum, to be expended by the secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the secretary of the Territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

Sec. 12. And be it further enacted, That the legislative assembly of the Territory of Utah shall hold its first session at such time and place in said Territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said Territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly. And the sum of twenty thousand dollars, out of any money in the treasury not otherwise appropriated,
is hereby appropriated and granted to said Territory of Utah to be applied by the governor and legislative assembly to the erection of suitable public buildings at the seat of government.

Sec. 13. And be it further enacted, That a delegate to the House of Representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly: Provided, That said delegate shall receive no higher sum for mileage than is allowed by law to the delegate from Oregon.

Sec. 14. And be it further enacted, That the sum of five thousand dollars be, and the same is hereby, appropriated out of any moneys in the treasury not otherwise appropriated, to be expended by and under the direction of the said governor of the territory of Utah, in the purchase of a library, to be kept at the seat of government for the use of the governor, legislative assembly, judges of the Supreme Court, secretary, marshal, and attorney of said Territory, and such other persons, and under such regulations, as shall be prescribed by law.

Sec. 15. And be it further enacted, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

Sec. 16. And be it further enacted, That temporarily, and until otherwise provided by law, the governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent sessions, may organize, alter, or modify such
judicial districts, and assign the judges, and alter the times
and places of holding the courts, as to them shall seem proper
and convenient.

Sec. 17. And be it further enacted, That the Constitu-
tution and laws of the United States are hereby extended over
and declared to be in force in said Territory of Utah, so far
as the same, or any provision thereof, may be applicable.

Approved: September 9, 1850.
APPENDIX VIII

PROCLAMATION

Whereas, by the sixteenth section of the Act of the Congress of the United States, entitled "An Act to Establish a Territorial Government for Utah" approved September 9, 1850, it is enacted, That temporarily, and until otherwise provided by law, the Governor of said Territory, and assign the judges who may be appointed for said Territory, may define the judicial districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him:

Now, therefore, I, Brigham Young, Governor of said Territory in pursuance of the direction, and by virtue of the authority vested in me by the said Act of Congress, do hereby make proclamation, that I have defined the judicial of said Territory, assigned the judge appointed for said Territory to the several districts; and have also appointed the times and places for holding Courts in several counties or sub-divisions in each of the said judicial districts, as follows; to wit:

I. The City and County of Great Salt Lake, the County of Tooele, and the adjacent territory east and west, to the boundaries of the Territory, including Bridger's precinct, shall compose the first judicial district.

There shall be semi-annual terms of Court for said districts held in Great Salt Lake City, commencing on the second Tuesday of April and October, to continue each term one week, if necessary, and may adjourn to any other county in said district, if business shall require. The Honorable Lemuel G. Brandebury is assigned to said district, and will hold Courts therein.

II. The Counties of Davis and Weber and the adjacent territory east, west, and north to the boundaries of the Territory shall compose the second judicial district. There shall be semi-annual terms of Court for said district, held in Ogden City, in Weber County, commencing on the second Tuesday of May and December, to continue each term one week, if necessary, and may adjourn to any other County in said district, if business shall require. The Honorable Zerrubbabel Snow is assigned to said districts and will hold the courts therein.
III. The Counties of Utah, Sanpete, and Iron and the adjacent territory east, west and south, to the boundaries of the Territory shall compose the third judicial district. There shall be semi-annual terms of court for said district, held at Provo City, in Utah County, commencing on the second Tuesday of August and February, to continue each term one week if necessary, and may adjourn to any other county in said district if business shall require. The Honorable Perry E. Brocchus is assigned to said district, and will hold Court therein.

The foregoing judicial district, assignment of judges and times and places of holding Courts to continue, and be observed by Officers of the Territory, parties interested and all other persons until otherwise, altered, or modified by the legislative assembly at their first or any subsequent session, as is further provided in the said sixteenth section in the Act above referred to.

Given under my hand, and the seal of said Territory, at Great Salt Lake City, this eighth day of August, Anno Domine eighteen hundred and fifty-one.

Brigham Young, Governor.

B. D. Harris, Secretary.
APPENDIX IX

Indictment for Murder

October Term 1851

Before the Hon. Z. Snow, Judge of the First Judicial District Court of the United States for the Territory of Utah.

United States versus Howard Egan

Seth M. Blair, Esq., () Prosecuting Attorney
Geo. A. Smith, Esq., ()
W. W. Phelps, Esq., () Counsel of Prisoner

This case was brought before said Court by Presentment, &c.

PLEA OF GEORGE A. SMITH, ESQ.

Please the Court, and Gentlemen of the Jury: With the blessing of the Almighty, although not in proper state of health, I feel disposed to offer a few reasons, and present a few arguments, and perhaps a few authorities, upon the point in question. In the first place I will say, gentlemen of the Jury, you will have to bear with me in my manner of communication, being a new member of the bar, and unaccustomed to addressing a Jury. The case upon which I am called to address you is one of no small moment. It is one which presents before you, and to investigate which, involves the life of a fellow-citizen.

I am not prepared to refer you to authorities on legal points, as I would have been had not the trial been so hasty; but as it is, I shall present my arguments upon a plain, simple principle of reasoning. Not being acquainted with the dead languages, I shall simply talk the common mountain English, without reference to anything technical. All I want is simple truth and justice. This defendant asks not his life, if he deserves to die; but if he has done nothing but an act of justice, he wishes that justice be awarded to him.
It is highly probable that the manner in which I may present my arguments, may be exceptionable to the learned, or to the technical policy of modern times; be that as it may, the plain simple truth is what I am aiming at.

I am happy to behold the intelligent Jury, who are looking for justice instead of some dark, sly, or technical course by which to bias their judgement. I shall refer in the first instance to an item of law, which was quoted by the learned prosecutor yesterday, in which he stated to this jury, that the person killed should be, or must be, a reasonable creature. Now what dark meaning, what unknown interpretation the learned and deep-read man of the law may give by which to interpret this language, it is impossible for me to say; as I said before, it is the plain mountain English that I profess to talk. It was admitted on the part of the prosecution, that James Monroe, who is alleged in the indictment to have been killed by Howard Egan, had seduced Egan's wife; that he had come into this place in the absence of her husband, and seduced his family, in consequence of which, an illegitimate child has been brought into the world; and the disgrace which must arise from such a transaction in his family, had fallen on the head of the defendant. This was admitted by the prosecution. Now, gentlemen of the Jury, according to plain mountain English, a reasonable creature will not commit such an outrage upon his fellow man; that is the plain, positive truth, as we understand it.

But, perhaps, this defendant is to be tried by the laws of England, and perhaps in England they have a different understanding of the passage. Suppose I admit it for argument sake. It was a point repeatedly argued and decided by Chancellor Kent, that every honest man was a lawyer, and that the intent of the law was to do justice. The Statutes of Organic Law of Utah, which extends the laws of the United States, and secondly, in a degree, the laws of England, over this country, make a reservation in the matter, which I wish to consider favourably, for the benefit of my client. —"The laws of the United States are hereby extended, and decreed to be in force in said territory, so far as the same or any provision thereof may be applicable." Now we donot consider the wise legislators extended these laws over this territory, only that they should be applicable; they no doubt supposed they might not be applicable in certain cases, and therefore wisely inserted that clause. Then, if a law is to be in force upon us, it must be plain and simple to the understanding, and applicable to our situation.

I will quote history instead of law. I will go back to the time when Rome was a young and flourishing state; when in the midst of prosperity they thought proper to produce a code of law; and being wilderness men they sent to the wise
and learned Greeks for a code of laws. The wisest lawyers of Greece were selected, who formed first code written upon ten tables, and finally added two others, which were received by the Roman Senate. Now I wish you to understand me as bringing this up by way of illustration, knowing that these men before me were sworn to execute justice, and if I can illustrate this to their understanding, one point gained, so far as it has a bearing on the case.

The law of the twelve tables were formed for a people possessing the Greek refinement and Greek ideas; Greek notions of right and wrong; they had to put them in force: and, let me ask you what was the result? Read the pages of history, and hundreds of mourning families will tell the sad tale! The truth is written with the blood of thousands, through taking the rules, laws, and regulations of the old and rotten confederacy, and applying them to a new and flourishing territory! I argue, then, that these laws, which may have force in England, are totally inapplicable to plain mountain men.

I want to inquire whether the genius, and the spirit, and the actual existing principle of justice and right, which abide in the inhabitants of these mountains, is the same as that found among the nations of the old world? And whether such an application of law and justice as that I have just noticed is applicable to us?

In England, when a man seduces the wife or relative of another, he enters a civil suit for damages, which may perhaps cost him five hundred pounds, to get his case through; and, a matter of course, if he unfortunately belongs to the toiling million, he may get twenty pounds for damages. In this case, character is not estimated, neither reputation, but the number of pounds, shillings, and pence alone bear the sway, which is common in the courts of all old and rotten governments.

In taking this point into consideration, I argue that in this territory it is a principle of mountain common law, that no man can seduce the wife of another without endangering his own life. I may be asked for books. Common law is, in reality, unwritten law; and all that has been written is the decisions of courts; and everytime some new decision comes up, it is written, which you may find stacked in the Attorney General's office, in Great Britain. This is continuing: fresh decisions are still being made, and new written authorities added; and precedent upon establishment in the courts of the United States and Great Britain; and must we be judged from these ten thousand books?

What is natural justice with this people? Does a civil suit for damages answer the purpose, not with an isolated individual, but with this whole community? No! it
does not!! The principal, the only one, that beats and throbs through the heart of the entire inhabitants of this Territory, is simply this: The man who seduces his neighbour's wife must die, and her nearest relative must kill him!

Call up the testimony of Mr. Horner, and what does he say? After Mr. Egan killed Monroe, he was the first one to meet him. Egan said "Do you know the cause?" Mr. Horner had been acquainted with it: he said he advised Monroe, and told him for God's sake to leave the train, for he did not wish to see him killed in his train. Mr. Horner knew the common law of this Territory: he was acquainted with the genius and spirit of this people: he knew that Monroe's life was forfeited, and the executor was after him, or he (the executor) was damned in the eyes of this people forever. "Do leave the train," says Horner; "I would not have you travel in it for a thousand dollars." Was Monroe a reasonable creature, when he knows the executioner is on his tracks, and at the same time walk over the law; crawl between the sheets of a fellow citizen, and there lay his crocodile eggs, and then think to stow away gunpowder in a glowing furnace? If we are called upon here to say whether a reasonable creature has been killed, a negative reply is certain.

Not Mr. Horner only, who has testified that he knew the cause of the deed, but a number of others. When the news reached Iron County, that Egan's wife had been seduced by Monroe, the universal conclusion was, "there has to be another execution;" and if Howard Egan had not killed the man he would have been damned by the community forever, and could not have lived peaceably without the frown of every man. Now we see that the laws of only require a civil suit for damages in a case of seduction; but are these laws to be applied to us who inhabit the mountain heights? The idea is preposterous. You might as well think of applying the law of England which pertains to the sovereign lady, the Queen alone. I will apply it, and with much better sense; "To seduce the sovereign lady, the Queen, is death by the law." I will say, here, in our own Territory, we are a sovereign people, and to seduce the wife of a citizen is death by the common law.

There is no doubt in but this case may be questioned, but there is an American common law as well as an English common law. Had I the books before me, which are at hand in the public library, I might show you parallel instances in the United States, where persons standing in like position to this defendant have been cleared. I will refer to the case of "New Jersey vs. Mercer," for killing Hibberton, the seducer of his sister. The circumstances took place upon a public ferry-boat, where Hibberton was shot in a close carriage, in the public manner. After repeated jury sittings upon his case, the decision was NOT GUILTY. We will allow this to be set down as a
precedent, and, if you please, call it American common law. I will refer to another case: that of "Louisiana vs. Horton," for the killing of the seducer of his sister.—The jury in this case also found the prisoner NOT GUILTY. This is the common practice in the United States, that the man who kills a seducer of his relatives is set free.

A case of this kind came under my observation in Kentucky. A man, for the taking the life of the seducer of his sister, was tried and acquitted, although he did the deed in the presence of hundreds of persons: he shot him not more than ten feet from the court house. I saw the prosecutor, and conversed with him, and have a knowledge of the leading facts. I bring these instances before the jury, to show that there are parallel cases to the one before us in American Jurisprudence; and yet, in some of the States a civil suit for damages will answer the question.

Walker on the subject, for instance, in the State of Ohio, tells us in cases of this kind a civil suit may be instituted, and a fine imposed; the civil suit may bring damages according to the character of the person, and that is considered an equivalent for the crime. What is the reason that these civil suits are tried in this way? It is because the spirit that actually reigns in these rotten and overgrown countries is to prostitute female virtue.

Go into the cities of Great Britain, where the census reports between two and three hundred thousand prostitutes: if a man seduces a female, no matter how it occurs, a few pence is all the scoundrel has to pay. Hedamns the women, who is consigned to infamy, and compelled to linger out a short existence, and ultimately covers her shame, seeking repose in a premature grave; and this is the spirit and genius, not only of the people of Great Britain, but some of the States also. How is it here in these mountains, here the genius, spirit, and regulation of society are different from those old nations. Why, men are a necessity for respecting female chastity, when the seducer is no more secure aboard than a dog is that is found killing sheep.—Female virtue is not protected by the old governments; but they are corrupt institutions which prostitute and destroy the female character and race.

Just consider this matter. Is the law, the spirit, and the institutions of a people who for in for preserving inviolate—the perfect innocence, the chastity of the entire female sex,—is it to compare with the spirit and genius of communities that only value it by a few dimes? I say that the Congress of the United States have wisely provided that the law of the United States shall not extend over us any further than that they are applicable.
The Jury will please excuse my manner of treating this matter: I am but a young lawyer--this is my first case, and the first time I ever undertook to talk to a Jury in a court of justice. I say, in my own manner of talking upon the point before you, a fellow citizen, known among us for years, is tried for his life; and for what? For the justified killing of a hyena, that entered his sheets, seduced his wife, and introduced a monster into his family! and to be tried, too, by the law of a government ten thousand miles from here.

If Howard Egan did kill James Monroe, it was in accordance with the established principles of justice known in these mountains. That the people of this Territory would have regarded him as accessory to the crimes of that creature, had not done it, is also a plain case. Everyman knew the style of old Israel, that the nearest relation would be at the heels to fulfill the requirements of justice.

Now I wish you, gentlemen of the Jury, to consider that the United States have not got the jurisdiction to hang that man for this offence: the laws are not applicable to it; they have ceded away power to that thing; it belongs to the people of this territory; and, as a matter of course, we deny the right of this court to hand the defendant, on principles that have been ceded away to somebody else to act upon.

For instance, the learned attorney for the prosecution read a certain item in the law of the United States yesterday to the jury, that they might know how to act. Now this is presented to us as a case of exclusive jurisdiction, and as a matter of course, no common law must be brought in, but we are called upon to hang a man according to the customs of a nation, ten thousand miles away from here, whose principles, organization, spirit, ideas of right and wrong, of crime and justice, are quite different from those which prevail in this young and flourishing territory. To enforce these laws would be highly pernicious to our prosperity as a people, and as a nation. Therefore, Congress has wisely provided that the people of this territory should not be imposed upon; for instance, as long ago as September 9, 1850, they passed an act providing for the organization of a judiciary, that an original jurisdiction should be acknowledged, as far as the same be applicable to us, AND NO FURTHER. This act of killing has been committed within the Territory of Utah, and is not therefore under the exclusive jurisdiction of the United States.

I have been admitted to speak before this intelligent court, for which I feel grateful; and I come before you, not for the pence of that gentleman, the defendant, but to plead for the honour and rights of this whole people, and the defendant in particular; and gentlemen of the jury, with the limited knowledge I have of law, were I a juryman, I would lay in the
jury-room until the worms should draw me through the keyhole, before I would give in my verdict to hang a man for doing an act of justice, for the neglect of which he would have been damned in the eyes of this whole community.

I make this appeal to you, that you may give unto us a righteous verdict, which will acquit Mr. Egan, that it may be known, that the man who shall institute himself into the community and seduce his neighbour’s wife, or seduce or prostitute any female, he may expect to find no more protection than the wolf would find, or the dog that the shepherd finds killing the sheep: that he may be made aware that he cannot escape for a moment.

God said to Cain, I will put a mark upon you, that no man may kill you. I want the crocodile, the hyena, that would destroy the reputation of our females to feel that the mark is upon him; and the avenger upon his path, ready to pounce upon him at any moment to take vengeance; and this, that the chastity of our women, our peace, and no more be annoyed by such vile desperations.

Should the Jury feel it their duty to return a verdict in favor of the defence, you are aware that you are borne out in this by the precedent already set by the courts of the United States in the few instances I have noticed; that the laws of the United States extending to this case, does not exist; that the laws of the United States do not apply at all; and as men who look for justice, as intelligent lawyers knowing what is right and wrong, must know, that a verdict, such as the defendant desires, will alone bear justly on the case.

I feel very thankful to the honourable court, and to the jury, as also to the spectators, for the audience given me; and, as I said in the commencement, my health not being good, I was unable to take hold of this business so as to treat it in a manner to satisfy myself, and do justice to the case of my client; and I would say further, what I have said has been in my own mountain English; what the learned prosecution may be able to show I cannot tell; enough has been said to show that this defendant has a right, upon just and pure principles, to be acquitted.
JUDGE SNOW'S CHARGE TO THE JURY

Gentlemen of the Jury, -- The Grand Jury, called and sworn on behalf of the United States, having presented an indictment against Howard Egan for the murder of James Monroe--it becomes our duty to proceed with the case, and if should be convicted or found guilty of violating the laws of the United States in this behalf, to pass sentence against him. For the purpose of determining the facts, you have been empanelled and sworn to give a true verdict according to the evidence which should be given you in court. You will readily see that your duty is important. It is the right of the United States—the right of the citizens of this territory, and the right of the defendant to insist that you shall now discharge that duty without fear, affection, or partiality. It is the right of us all to insist that, when a crime has been committed, the offender shall be punished by due course of law, but not otherwise. We have no right to punish a person for a real or imaginary wrong, except with the authority of law. The safety of ourselves individually, and of society, depends on the correct and faithful administration of good and wholesome laws. No one ought to be punished unless he be guilty of an act worthy of punishment, nor even then, unless the act has been declared to be penal by the law of the land, and the punishment directed, nor until he has had an opportunity of having a fair and impartial trial, for peradventure, he may not be guilty as alleged against him. If the law suffered a person to be punished upon mere rumour, or upon strong circumstance, accompanied with the communication of our best—our bosom friends, without the usual test of truth which have been established, we might well pause and wonder whereunto this would grow.

Gentlemen, you are the exclusive judges of the facts, and the court is to be the judge of the law when the facts are found by you. Murder may be defined to be, the unlawful killing of a human being in the peace of the republic with malice prepense, or of forethought, by another human being who is of sound mind and discretion.

In this case, there is no pretence but that the defendant, at the time of the alleged killing of James Monroe, was of sound mind and discretion; so you are relieved of that part of
When you retire to your jury room, you will first proceed to inquire from the evidence, whether or not James Monroe be dead. If you do not find him to be dead, that ends the case, and your verdict must be, not guilty. If you find him to be dead, you will proceed to inquire by what means he came to his death; if by violence, then inquire whether or not the defendant gave him the mortal wound. If you find he did not, that ends your inquiries; and he is entitled to a verdict of, not guilty. If you find the defendant gave him the mortal wound, you will then inquire whether the killing was lawful or unlawful. In law, every killing of one human being by another of sound mind, is unlawful, except such as the law excuses or justifies.

If a person when doing a lawful act, by accident kills another, it is excusable homicide. If a person kills another on a sudden attack in defence of himself, wife, child, parent, or servant, it is excusable homicide. If the proper officer executes the sentence of the law upon another, by taking his life pursuant to the judgement of a court legally rendered, it is justifiable homicide. If an officer of the law in the exercise of a particular legal duty, is forcibly resisted or prevented, and, without malice, kills the one who resists, it is justifiable homicide. If a homicide be committed to prevent the forceable commission of an atrocious crime, such as murder, robbery, rape, etc., it is justifiable; but it is not so if done to punish the offender after the crime has been committed. If you find any of these in favor of the defendant, then your verdict must be, not guilty; but if none of these things exist, then the killing, if it has taken place, is unlawful; in that event you will proceed to inquire, in regard to the malice prepense, or malice aforethought. Malice prepense, or malice aforethought, means premeditated malice, or malice thought of, before the killing occurred. It may be a meditation for a few moments only, or it may be of a long standing—it may be owing to injury, real or imaginary, received from the deceased, by the accused. The law does not permit a person to take the redress of grievances into his own hands. Though the deceased may have seduced the defendant's wife, as he now alleges, still he had no right to take the remedy into his own hands. If, for seduction, the law inflicted the punishment of death, it would not justify nor excuse the injured party from guilt, if he inflicted death without a judgement of the law to the effect, nor even with such a judgement, unless he be the officer of the law appointed for the purpose. If as it is contended by the defendant's attorney, he killed Monroe in the name of the Lord, it does not change the law of the case. A man may violate a law of the land and be guilty, and yet, so far as he is concerned, do it in the name of the Lord. If, as it has been contended by the district attorney, the defendant, before he left the city, formed the design of killing Monroe, or if he
so formed the design after he left, and before he met him, or if he formed it while in conversation with him, it was malice prepense of aforethought. If the deceased did seduce the defendant's wife, and begat her with child; and if for this the defendant killed him, in law, the killing was unlawful.

Should you be of the opinion in all these things, that the defendant is guilty, then the place in which the act was committed becomes material. This would not in most cases affect the general result, provided the crime be committed within the jurisdiction of the court trying the accused.

The materiality in this case, arises in consequence of the peculiar relationship of the United States courts with the courts of the several States and Territories. The jurisdiction of the United States courts is separate and distinct from the jurisdiction of the State Courts. But in the Territories, the same judges sit in matters arising out of the constitution and laws of the United States, as well as the laws of their respective Territories. This, to me, has been the most difficult part of the case. The territorial courts being a mixed jurisdiction, partly national and partly local in their organization, it becomes important to keep in view these two jurisdictions. When sitting as a court of the United States, we must try criminals by the laws of the United States, and not by the Territorial laws; we must look to them for our authority of the law.

When sitting as Territorial courts, we must try criminals by the law of the Territory, and look to them for our authority to punish. If the laws of the United States do not authorize us to punish in a case like the present, as we are now sitting as a United States court; the defendant for this reason is entitled to a verdict of not guilty.

The United States have no right to pass a law to punish criminals, except in those cases which are authorized by the constitution. These may be said to be national in their character, and to extend to all places under the sole and exclusive jurisdiction of the United States, but they do not extend to those places within the United States, when there is an existing State or Territorial jurisdiction, unless they are to protect its necessary internal authorities, such as protecting its postal arrangements, its revenue laws, its courts and officers, and the like cases. There is a large extend of country between this city and the Missouri river, over which the United States have the sole and exclusive jurisdiction; and there is a part of this same country within the jurisdiction of the State of Missouri, and another part within the jurisdiction of this Territory.
It is the right of every American citizen to have full
and ample protection of life, liberty, and happiness; and the
duty of the United States, in those places where it has the
sole and exclusive jurisdiction, to extend that protecting hand
over them; and the duty of the States and Territories in their
respective jurisdictions, subject to the constitution and laws
of the United States, to extend a like protecting hand. By
this you will see that the United States, when it established
the Territorial governments, giving them the right of legisla-
tion, created a jurisdiction within its own jurisdiction, but
subject to the supervisory control: therefore, it has not the
sole and exclusive jurisdiction within the limits of the exist-
ing Territories.

By the third section of Congress approved April 30,
1790, chapter 9, it is enacted, "that if any persons shall,
within any fort, arsenal, dock-yard, magazine, or any other
place or district of country, under the sole and exclusive
jurisdiction of the United States, commit the crime of wilful
murder, such person or persons on being thereof convicted,
shall suffer death."

You see by this law, the crime must be committed within
the place over which the United States have sole and exclusive
jurisdiction. You will look to the evidence given you in court
for the fact of the case; if you find the crime, if any has
been committed, was committed within the extent of country
between this and the Missouri river, over which the United
States have the sole and exclusive jurisdiction; your verdict
must be guilty. If you do not find the crime to have been com-
mitted there, but in the Territory of Utah, the defendant for
that reason, is entitled to a verdict of not guilty. If, in
any of these points, you entertain reasonable doubt, you may
give the defendant the benefit of those doubts. Reasonable
doubts are not mere capricious doubts, but such as reasonable
men may honestly entertain. We often have painful duties to
discharge, but ought not for this reason to shirk from duty.
It is better to bear with many wrong acts, than for the accom-
plishment of a given object, to depart from the great and
well-approved principles on which mainly depends our lives,
liberty and happiness. Gentlemen, the case for the present,
is committed for your consideration.

Jurors' verdict, "NOT GUILTY."
APPENDIX XI

AN ACT IN RELATION TO THE JUDICIARY

Sec. 1. Be it enacted by the Governor and Legislative Assembly of the Territory of Utah, That the Judicial Districts and the terms of the District Courts therein, respectively, shall remain as at present fixed until otherwise directed: Provided, The Judge of the District may hold special term or terms in any other County in such district at such times and places as the press of Judicial business shall require.

Sec. 2. The District Courts shall exercise original jurisdiction, both in civil and criminal cases, and as well in Chancery as at Common Law, when not otherwise provided by law. They shall also have a general supervision over all inferior Courts, to prevent and correct abuses where no other remedy is provided.

Sec. 3. The Sheriff of the County, wherein the Court is held, together with all necessary assistants must attend upon the sessions of the Court; if required.

Sec. 4. The Clerk of each District or County, shall keep a record of the proceedings of the Court, under the direction of the judge. He shall, from time to time, read over all entries therein in open Court, which, when correct, shall be signed by the Judge. Entries made in vacation shall be read and approved at the next term of the Court. The record is under the control of the Court, and may be amended, or any entries therein expunged at any time during the term of the Court at which it is made, or before it is signed by the Judge as aforesaid; but entries made, approved, and signed by the Judge, cannot be altered only to correct an evident mistake.

Sec. 5. The Judges of the District Courts, respectively, shall report to the Legislature at each regular session thereof, all omissions, discrepancies, or other evident imperfections of the law which have fallen under their observation.

Sec. 6. The Judges of the Court may report their own decisions, or they may appoint a reporter who shall hold his office at the pleasure of the Court, and all decisions or opinions, and all questions received on appeal, as well as motions,
collateral questions, and points of practice, as they may think of sufficient importance, shall be reduced to writing and filed with the Clerk of the Court.

Sec. 7. Each of the Clerks must keep a complete register of all proceedings of the Court with an index to the same; and generally, they must perform all the other duties ordinarily pertaining to their offices.

Sec. 8. The said Courts may adopt all such rules as they may deem expedient, consistent with the law, the prime object of which shall be to carry out the purposes of the statutes, and to subserve the ends of justice, dispensing with all needless forms, and disregarding and abridging all technical pleadings with a view to the attainment of justice; all technical forms of actions and pleadings are hereby abolished.

Sec. 9. Any pleading which possesses the following requisites shall be deemed sufficient. First, when to the common understanding it conveys a reasonable certainty of meaning. Second, when by a fair and natural construction, it shows a substantial cause of action or defence. If defective in the first above particulars, the Court shall direct a more specific statement. If in the latter, it is ground of demurrer; demurrers for formal defects are abolished, those for substantial defects must set forth the true ground of objection to the pleading demurred to, upon the determination of any demurrer, the party failing, may demend (sic), or plead upon such terms as the Court deems just, or as it may by general rule prescribe.

Sec. 10. Immaterial variances (sic), errors, or defects, may be disregarded, or the Court may direct an amendment with, or without costs. No variance, error, or defect shall be deemed material, unless the Court is satisfied that the objecting party will be prejudiced by disregarding it, or by allowing it to be amended. The Court may allow material amendments at any stage of the proceedings upon such terms, and subject to such rules as it may prescribe. If an original pleading or paper be lost, or withheld by any person, the Court may authorize a copy thereof to be filed and used instead of the original.

Sec. 11. By the consent of the Court and the parties, any person may be selected to act as Judge for the trial of any particular cause or question; and while thus acting he shall possess all the powers of the District Judge in the case.

Sec. 12. The plaintiff cannot take a non-suit without the consent of the defendant, after the latter has claimed a set-off; but he may dismiss his cause of action, leaving the defendant to proceed on his set off in the capacity of plain-
tiff, either may withdraw his claim at any time before the jury retire but not after.

Sec. 13. Costs may be apportioned to either party, or apportioned between them, as shall be deemed equitable by the Court.

Sec. 14. When a judgment is set aside or satisfied by execution or otherwise, the Clerk shall enter a memorandum thereof in the column left for that purpose, in the judgment docket.

Sec. 15. Parties to a question in difference which might be the subject of a civil action, may present an agreed statement of the facts thereof, to any Court having jurisdiction of the subject matter.

Sec. 16. It must be shown by affidavit, that the subject matter is real, and that the proceeding is in good faith to determine the rights of the parties thereto.

Sec. 17. The Court must thereupon hear and determine the case, and the judgment rendered thereon will be the same in all respects as though suit had been brought in the regular manner, and will be followed by the same consequences.

Sec. 18. All Judicial proceedings must be public unless otherwise specifically provided by statute, or otherwise agreed upon by the parties.

Sec. 19. The Judge or Justice shall not be disqualified in consequence of interest, consanguinity, or otherwise, unless objected to previous to the parties joining issue, and introducing testimony.

Sec. 20. The Court shall have power to punish by fine, or imprisonment, or both, at their discretion, for contempts, or any wilful disturbing, calculated to interrupt the due course of its official proceedings, or which may tend to impair the respect due to its authority.

Sec. 21. Public buildings owned by the Territory or any County, City School District, Ward, University, or Religious Society, and burying grounds, are exempt from execution.

Sec. 22. The following property of individuals is also exempt from execution: all wearing apparel kept for actual use and suitable to the condition of the party, and trunks, and other receptacles to contain the same, one musket, or rifle, and accoutrements, and ammunition required for one hundred charges of loading; the proper tools, instruments, or books of any farmer, mechanic, surveyor, physician, teacher, or professor;
the horse or team, and wagon, or other vehicle with the proper
harness or tackle by the use of which any physician, public
officer, farmer, teamster, or other laborer habitually earns
his living; all libraries, family books, portraits and paint-
ings, any interest owned by the debtor or his parents, in one
house of public worship, school house or burying ground. If
the debtor is head of a family, there is further exempt, one
cow and calf for every three persons in the family, one horse,
fifty sheep and the wool therefrom, five hogs and all pigs
under six months old, the necessary food for all animals, for
sixty days exempt from execution; all flax raised by the
defendant, and the manufactures therefrom; one bedstead and
the necessary bed and bedding for every two in the family;
all cloth manufactured in the family of the defendant, or by
the defendant; household and kitchen furniture not exceeding
one hundred dollars in value; all spinning wheels, and looms,
and other instruments of domestic labor, kept for actual use;
and the necessary provisions and fuel for the use of the family
for six months; said term family does not include strangers or
boarders. The earnings of such debtor for his personal ser-
vice, or those of his family at any time within ninety days
next preceding the levy, are also exempt from execution or
attachment.

Sec. 23. None of the exemptions herein made are in-
tended for the benefit of non-residents; but their property is
liable to execution, with the exception of the ordinary wear-
ing apparel; but any person coming within the Territory with
the intention of remaining, is a resident within the meaning
of this act, and nothing herein shall be so construed as to
exempt the property of any transient person, or persons about
to depart from the Territory or county, with the intention of
removing their effects therefrom.

Sec. 24. There shall be a Judge of Probate in each
County within the Territory, whose jurisdiction within his
Court in all cases, arises within their respective Counties
under the laws of the Territory; said Judge shall be elected
by the joint vote of the Legislative Assembly, and commissioned
by the Governor; they shall hold their offices for the term of
four years, and until their successors are elected and quali-
fied. They shall be qualified and sworn by any person author-
ized to administer oaths, and give bonds and security in the
sum of not less than ten thousand dollars, to be approved by
the Clerk of the District court or the Judge thereof, and filed
in his office.

Sec. 25. In case of a vacancy occurring in the office
of the Judge of Probate, the Governor may appoint and fill such
vacancy until the next succeeding Legislative Assembly, or some
subsequent one, shall elect one; said Judge of Probate so appointed shall qualify and give bond as above provided.

Sec. 26. The Probate Court shall be considered in law as always open; but for the transaction of business requiring notice, the Judge shall hold regular sessions on the second Mondays of March, June, September and December of each year, and shall continue at each session one week, or until the business ready for trial shall be disposed of.

Sec. 27. When the District Court is to sit in a County on any of the days appointed in the preceding section for the sessions of the Probate Court, the latter shall be held on the Monday preceding, and when the Judge is required by law to perform any duty which takes him from the County, on one of the appointed days, the session of the Court shall be holden on the following Monday, or such day as the Judge may appoint.

Sec. 28. The Judge of Probate has jurisdiction of the Probate of Wills, the administration of the estates of deceased persons, and of the guardianship of minors, idiots and insane persons.

Sec. 29. The Probate records shall be kept in books separate (sic) from those of the other business of the Court.

Sec. 30. The several Probate Courts in their respective Counties, 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; and they shall be governed in all respects by the same general rules and regulations as regards practice as the District Courts.

Sec. 31. Appeals are allowed from all decrees or decisions of the Probate to the District Courts, except when otherwise expressed on the merit of any matter affecting the rights or interest of individuals, the appeal shall be taken within thirty days from the day on which the decision was made, and shall be taken by claiming the appeal and filing, in the clerk of the Probate Courts office, a bond with one or more sureties and a penal sum to be approved by the Probate Judge or Clerk; said bond shall be conditioned, that said appellant will prosecute the appeal with effect; that if the appeal be dismissed or the judgment below affirmed, he will comply with the judgment, and orders made by the Court below, and that he will pay all costs, and sums of money that may be adjudged against him in the Court appealed to, and will comply with the orders of that Court, the appeal shall be taken to the next term of the District Court in the County, or next nearest County, where the same shall be holden, if there be ten days between the day when the judgment was rendered, and the day of the sitting of the District Court.
Sec. 32. Within twenty days from the day of the appeal, and within five days in the case mentioned in the last paragraph of the preceding section, the Clerk of the Probate Court is required to file a transcript of the proceedings in the matter in which the appeal is taken, authenticated by the seal of the Probate Court with the Clerk of the District Court, who shall enter the same among the cases pending in that Court. Transcripts of the records and copies of the papers pertaining to the Probate Court, may be certified and signed by either the Clerk of the Judge.

Sec. 33. The Probate Judges in their respective Counties shall appoint a Clerk, who shall keep his office at the County seat, and who shall attend all sessions of the Probate Court, as also sessions of the county court, for the transaction of County business. It shall be the duty of the Clerk of the Probate Court to keep a full and true record of all the proceedings in the Probate Court in session, entering distinctly each step in the progress of any proceeding; but such record shall be equally valid if made by the Judge.

Sec. 34. The Clerks of the District Courts and of the Probate Courts respectively, are hereby required to report to the Secretary of the Territory, on or before the first Monday of November of each year, the number of convictions for all crime, and misdemeanors, in their respective Courts, for the year preceding such report, shall show the character of the offence, and the sentence of punishment, the occupation of the convict, whether he can read or write, and his general habits, and also the expenses of the County for criminal prosecution during the year, including but distinguishing the compensation of the Prosecuting Attorney. The Clerks aforesaid shall also forward to the Secretary, copies of all reports made, of decisions, and opinions, which shall be reported, or filed in his office.

Sec. 35. The Probate Judge in connection with the select men, is hereby invested with the usual powers and jurisdiction of County Commissioners, and with such other powers and jurisdiction as are conferred by law, and in this connection, they shall be known as the County Court. The Clerk of the Probate Court shall be the Clerk of this Court, shall keep his office at the County Seat, and shall attend by himself, or deputy, all sessions of the Court, keep the records, papers, and seal of the Court. The office of the County Court is to be kept open for business at all usual times.

Sec. 36. This Court is authorized and required to take the management of all county business, and the care and custody of all the county property, except such as is by him placed in the custody of another, and shall have the control of all books, papers, and instruments pertaining to their
office; said Court shall audit all claims against the County; draw and seal with the County seal, all warrants or orders on the Treasurer for money to be paid out of the County Treasury, shall audit and settle the accounts of the Treasurer, and those of any person entrusted to expend any money of the County, and to require them to render their accounts as directed by law.

Sec. 37. Said Court shall keep a book to be known as the County book, in which shall be recorded all orders and decisions made by them, except those relating to roads and Probate affairs, and in which, orders for the allowance of money from the County Treasury shall state on what account, and to whom the allowance is made, dating and numbering the drawing on the Treasury each order, and said Court are to superintend the fiscal affairs of the County, and secure their management in the best possible manner.

Sec. 38. The County Court shall also keep a separate book for the entries of all proceedings and adjudications to the establishment, change, or discontinuance of bonds; and also separate books for Probate business. They shall keep an account of the receipts and expenditures of the County, and on the first Monday of May annually, cause a minute statement of them for the preceding year to be made, with an account of all debts payable to, and by the County, and the assets of the County; have a copy of the same posted up, one at the County seat at the usual place of holding Courts, and at each of two other public places in the County; and shall cause the original to be filed in their office.

Sec. 39. The County Court has 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 interest of the settlements, in the distribution of water for irrigation, or other purposes. All grants, or rights, held under Legislative authority, shall not be interfered with.

Sec. 40. The Judge of Probate, in connection with any two of the Select men, shall constitute a quorum, to do business; and the Select men may transact business separately throughout the County, relating to the poor, insane, orphans, minors, or other important business, requiring immediate attention; business so transacted shall be reported at their next subsequent session, and approved by the Court before becoming a matter of record. The Select men may also hold session in the absence of the Judge or Probate.

Sec. 41. The County Court shall district their respective counties into road districts, precincts, school districts, or such other sub-divisions as may become necessary or proper, locate sites for public buildings, and erect the same; select
Grand and Petit Jurors for their respective Counties, and generally do, and perform, all such duties, as shall be required by the nature of their office, and as shall be required by law.

Sec. 42. The County Court shall hold sessions twice a year, to wit: on the third Mondays of March and September, and oftener if they shall deem it necessary. They have authority to determine the amount of tax to be levied for County purposes, and provide for the collection of the same.

Sec. 43. Whenever it shall become necessary to extend the credit of the County for the purpose of erecting public buildings, building bridges, and working roads, which may call for any extraordinary expenditure, the County Court may submit the question to the people for their decision by fairly and explicitly stating the question, the amount of funds proposed to be raised, and the manner of raising them, whether by tax or otherwise; said question when thus submitted, shall be voted upon by the people of the County at some regular election, previous notice having been given in regard to said question in the same manner as required in giving notice of elections; and the decision of the people shall be the law so far as regards that particular question. If there should be an excess of funds thus raised for any particular purpose, the surplus may be paid into the County Treasury for County purposes.

Sec. 44. The Judges of the District and Probate Courts shall be conservators of the peace in their respective Districts and Counties, throughout the Territory, and it is their duty to use all diligence and influence in their power to prevent litigation.

Sec. 45. Any matter involving litigation may be referred to arbitrators, or referees, who may be chosen by the parties, or selected by the Court, as the parties shall elect; all such arbitrators have authority to subpoena witnesses, administer oaths, or affirmations, and issue process as the Court. And when they shall have made their decision, shall report the case, if necessary to enforce the same, to the Clerk of the County in which the case has arisen, or when the case has not arisen in any Court, to the Clerk of the Probate Court; and it shall be the duty of the Clerk in whose office any such decision has been filed, to make a record thereof, and proceed in the same manner, as if the case had been prosecuted and decided in the usual manner.

Sec. 46. The Select men shall appoint a Supervisor or Supervisors for their respective Counties, who, under their directions shall collect and apply the Pool Tax, in their
respective Districts, and make return to the Select men, on or before the first day of February annually.

Sec. 47. Select men and Supervisors, shall be governed in the discharge of their duties as prescribed for County Commissioners and Supervisors (so far as the same shall be applicable) in an Ordinance in relation to Road Tax and Supervisors.

Approved, February 4, 1852.
APPENDIX XII

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 four years, 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 with securities 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.

Sec. 4. An Attorney General shall be elected by the joint vote of the Legislative Assembly, whose term of office shall be four years, unless sooner removed by the Legislative Assembly, or until his successor is elected and qualified, and shall, before entering on the duties of his office, take an oath of office, and give bonds and security to the people of the Territory, conditioned for the faithful performance of his duty, to be approved by the Secretary of the Territory and filed in his office.

Sec. 5. It shall be the duty of the Attorney General to keep his office at the seat of Government, to attend to all legal business on the part of the Territory, before the courts, where the Territory is a party, and prosecute individuals accused of crimes in the Judicial District in which he
keeps his office, in cases arising under the laws of the Territory, and such other duties as pertain to his office.

Sec. 6. There shall be elected for each Judicial District (except the one in which the Attorney General keeps his office) a District Attorney by the joint vote of both Houses of the Legislative Assembly, who shall hold his office for four years, unless sooner removed by the Legislative Assembly, or until his successor is elected and qualified, and shall, before entering on the duties of his office, take an oath of office, and give bonds to the people of the Territory, conditioned for the faithful performance of his duties, to be approved by the Secretary of the Territory, and filed in his office.

Sec. 7. It shall be the duty of the District Attorneys, to attend to legal business before the Courts in their respective districts, where the Territory is a party; prosecute individuals accused of crimes, in cases arising under the laws of the Territory, and do such other duties as pertain to their office.

Sec. 8. A Prosecuting Attorney shall be appointed by the Probate Judge in each organized county in this Territory, whose term of office shall be four years, unless sooner removed by the Probate Judge, or until his successor is appointed and qualified, whose duty it shall be to attend to all legal business in the county, in which the Territory is a party, and prosecute before the Probate Court of his county, all individuals accused of crimes. Said Attorneys shall, before entering upon the duties of their respective offices, take an oath of office, and give bonds with securities, conditioned for the faithful performance of their duties, to be approved by the clerk of the Probate Court, and filed in his office.

Approved March 3, 1852.
APPENDIX XIII

AN ACT IN RELATION TO COURTS AND JUDICIAL OFFICERS IN THE TERRITORY OF UTAH

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
That it shall be the duty of the United States marshal of the
Territory of Utah, in person or by deputy, to attend all
sessions of the supreme and district courts in said Territory,
and to serve and execute all process and writs issued out of,
and all orders, judgments, and decrees made by, said courts,
or by any judge thereof, unless said court or judge shall
otherwise order in any particular case. All process, writs,
or other papers left with said marshal, or either of his depu-
ties, shall be served without delay, and in the order in which
they are received, upon payment or tender of his legal fees
therefor; and it shall be unlawful for said marshal to demand
or receive mileage for any greater distance than the actual
distance by the usual routes from the place of service or
execution of process, writ, or other paper, to the place of
return of the same, except that when it shall be necessary to
convey any person arrested by legal authority out of the
county in which he is arrested, said marshal shall be entitled
to mileage for the whole distance necessarily traveled in
delivering the person so arrested before the court or officer
ordering such arrest. Said marshal is hereby authorized to
appoint as many deputies as may be necessary, each of whom
shall have authority, in the name of said marshal, to perform
any act with like effect and in like manner as said marshal;
and the marshal shall be liable for all official acts of such
deputies, as if done by himself. Such appointment shall not
be complete until he shall give bond to said marshal, with
sureties, to be by him approved, in the penal sum of ten
thousand dollars, conditioned for the faithful discharge of
his duties; and he shall also take and subscribe the same oath
prescribed by law to be taken by said marshal, and said
appointment, bond and oath shall be filed and remain in the
office of the clerk of the supreme court of said Territory.
In actions brought against said marshal for the misfeasance
or non-feasance of any deputy it shall be lawful for the plain-
tiff at his option to join the said deputy and the sureties on
his bond with said marshal and his sureties. Any process either
civil or criminal returnable to the supreme or district courts,
may be served in any county, by the sheriff thereof or his legal deputy. And they may also serve any other process which may be authorized by act of the territorial legislature.

Sec. 2. That it shall be the duty of the United States attorney in said Territory in person or by an assistant, to attend all the courts of record having jurisdiction of offenses as well under the laws of said Territory as of the United States, and perform the duties of prosecuting officer in all criminal cases arising in said courts, and he is hereby authorized to appoint as many assistants as may be necessary, each of whom shall subscribe the same oath as is prescribed by law for said United States attorney and the said appointment and oath shall be filed and remain in the office of the clerk of the supreme court of said Territory. The United States attorney shall be entitled to the same fees for services rendered by said assistants as he would be entitled to for the same services if rendered by himself. The territorial legislature may provide for the election of a prosecuting attorney in any county; and such attorney, if authorized so to do by such legislature, may commence prosecutions for offenses under the laws of the Territory within such county, and if such prosecution is carried to the district court by recognizance or appeal, or otherwise may aid in conducting the prosecution in such court. And the costs and expenses of all prosecutions for offenses against any law of the territorial legislature shall be paid out of the treasury of the Territory.

Sec. 3. That there shall be held in each year two terms of the supreme court of said Territory, and four terms of each district court, at such times as the governor of the Territory may by proclamation fix. The district courts shall have exclusive original jurisdiction in all suits or proceedings in chancery, and in all actions at law in which the sum or value of the thing in controversy shall be three hundred dollars or upward, and in all controversies where the title, possession, or boundaries of land, or mines or mining claims shall be in dispute, whatever their value, except in actions for forcible entry, or forcible and unlawful detainer; and they shall have jurisdiction in suits for divorce. Probate courts, in their respective counties shall have jurisdiction in the settlement of the estates of decedents, and in matters of guardianship and other like matters; but otherwise they shall have no civil, chancery, or criminal jurisdiction whatever; they shall have jurisdiction of suits of divorce for statutory causes concurrently with the district courts; but any defendant in a suit for divorce commenced in a probate court shall be entitled after appearance and before plea or answer, to have said suit removed to the district court having jurisdiction when said suit shall proceed in like manner as if originally commenced in said district court. Nothing in this act shall be construed to impair the authority of the probate courts to
enter land in trust for the use and benefit of the occupants of towns in the various counties of the Territory of Utah, according to the provisions of "An act to amend an act entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands'" approved June eighth, eighteen hundred and sixty-eight; or to discharge the duties assigned to the probate judges by an act of the legislative assembly of the Territory of Utah entitled "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands.'" All judgments and decrees heretofore rendered by the probate courts which have been executed, and the time to appeal from which has by the existing laws of said Territory expired, are hereby validated and confirmed. The jurisdiction heretofore conferred upon justices of the peace by the organic act of said Territory is extended to all cases where the debt or sum claimed shall be less than three hundred dollars. From all final judgments of justices of the peace an appeal shall be allowed to the district courts of their respective districts, in the same manner as is now provided by the laws of said Territory for appeals to the probate courts; and from the judgments of the probate courts an appeal shall lie to the district court of the district embracing the county in which such probate court is held in such cases and in such manner as the supreme court of said Territory may, by general rules framed for that purpose, specify and designate, and such appeal shall vacate the judgment appealed from, and the case shall be tried de novo in the appellate court. Appeals may be taken from both justices' and probate courts to the district court of their respective districts in cases where judgments have been heretofore rendered and remain unexecuted; but this provision shall not enlarge the time for taking an appeal beyond the periods now allowed by the existing laws of said Territory for taking appeals. A writ of error from the Supreme Court of the United States to the supreme court of the Territory shall lie in criminal cases, where the accused shall have been sentenced to capital punishment or convicted of bigamy or polygamy. Whenever the condition of the business in the district court of any district is such that the judge of the district is unable to do the same, he may request the judge of either of the other districts to assist him, and, upon such request made, the judge so requested may hold the whole or part of any term, or any branch thereof, and his acts as judge shall be of equal force as if he were duly assigned to hold the courts in such district.

Sec. 4. That within sixty days after the passage of this act, and in the month of January annually thereafter, the clerk of the district court in each judicial district, and the judge of probate of the county in which the district court is next to be held, shall prepare a jury-list from which grand and petit jurors shall be drawn, to serve in the district
courts, of such district, until a new list shall be made as herein provided. Said clerk and probate judge shall alternately select the name of a male citizen of the United States who has resided in the district for the period of six months next preceding, and who can read and write in the English language; and, as selected, the name and residence of each shall be entered upon the list, until the same shall contain two hundred names, when the same shall be duly certified by such clerk and probate judge; and the same shall be filed in the office of the clerk of such district court, and a duplicate copy shall be made and certified by such officers, and filed in the office of said probate judge. Whenever a grand or petit jury is to be drawn to serve at any term of a district court, the judge of such district shall give public notice of the time and place of the drawing of such jury, which shall be at least twelve days before the commencement of such term; and on the day and at the place thus fixed, the judge of such district shall hold an open session of his court, and shall preside at the drawing of such jury; and the clerk of such court shall write the name of each person on the jury lists returned and filed in his office upon a separate slip of paper, as nearly as practicable of the same size and form, and all such slips shall, by the clerk in open court, be placed in a covered box, and thoroughly mixed and mingled; and thereupon the United States marshal, or his deputy, shall proceed to fairly draw by lot from said box such number of names as may have previously been directed by said judge; and if both a grand and petit jury are to be drawn, the grand jury shall be drawn first; and with the drawing shall have been concluded, the clerk of the district court shall issue a venire to the marshal or his deputy, directing him to summon the persons so drawn, and the same shall be duly served on each of the persons so drawn, at least seven days before the commencement of the term at which they are to serve; and the jurors so drawn and summoned shall constitute the regular grand and petit juries for the term for all cases. And the names thus drawn from the box by the clerk shall not be returned to or again placed in said box until a new jury-list shall be made. If during any term of the district court any additional grand or petit jurors shall be necessary, the same shall be drawn from said box by the United States marshal in open court; but if the attendance of those drawn cannot be obtained in a reasonable time, other names may be drawn in the same manner. Each party whether in civil or criminal cases, shall be allowed three peremptory challenges except in capital cases where the prosecution and the defense shall each be allowed fifteen challenges. In criminal cases, the court, and not the jury, shall pronounce the punishment under the limitation prescribed by law. The grand jury must inquire into the case of every person imprisoned within the district on a criminal charge and not indicted; into the condition and management of the public prisons within the district; and into the willful corrupt misconduct in office
of public officers of every description within the district; and they are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge of all public records within the district.

Sec. 5. That there shall be appointed by the governors of said Territory one or more notaries public for each organized county, whose term of office shall be two years, and until their successors shall be appointed and qualified. The act of the legislative assembly of the Territory of Utah entitled "An act concerning notaries public" approved January seventeenth, eighteen hundred and sixty-six, is hereby approved, except the first section thereof, which is hereby disapproved. Provided, That wherever, in said act, the words "probate judge" or "clerk of the probate court" are used, the words "secretary of the Territory" shall be substituted.

Sec. 6. That the supreme court of said Territory is hereby authorized to appoint commissioners of said court, who shall have and exercise all the duties of commissioners of the circuit courts of the United States, and to take acknowledgments of bail; and, in addition, they shall have the same authority as examining and committing magistrates in all cases arising under the laws of said Territory as is now possessed by justices of the peace in said Territory.

Sec. 7. That the act of the territorial legislature of the Territory of Utah entitled "An act in relation to marshals and attorneys," approved March third, eighteen hundred and fifty-two, and all laws of said Territory inconsistent with the provisions of this act, are hereby disapproved. The act of the Congress of the United States entitled "An act to regulate the fees and costs to be allowed clerks, marshals, and attorneys of the circuit and district courts of the United States, and for other purposes," approved February twenty-sixth, eighteen hundred and fifty-three, is extended over and shall apply to the fees of like officers in said Territory of Utah. But the district attorney shall not by fees and salary together receive more than thirty-five hundred dollars per year; and all fees or moneys received by him above said amount shall be paid into the Treasury of the United States.

Approved, June 23, 1874.
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A HISTORY OF THE FEDERAL AND TERRITORIAL COURT
CONFLICTS IN UTAH, 1851-1874
(164 pages)

An Abstract of the Thesis of
Clair T. Kilts
In Partial Fulfillment of the Requirements
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Master of Arts
in
History

Dr. Eugene Campbell  Chairman, Advisory Committee
Dr. Russell Rich  Member, Advisory Committee

Brigham Young University
July, 1959
ABSTRACT

In 1847 the Mormon pioneers arrived in the Salt Lake valley, bringing with them their own court system, which was to be their main resource for litigation for the next two years. The Church courts which were set up after 1847 proved insufficient, and in 1849 a need was felt for civil courts which could be used in the litigation with Gentile emigrants that were passing through the valley. To solve this problem, the State of Deseret was formed on March 12, 1849, giving the valley a civil authority. This was to last less than two years, for on September 9, 1850, Congress created out of the State of Deseret the Territory of Utah.

The first of the officials from the East arrived in Salt Lake City during the Summer of 1851. After a few weeks in the valley, the Eastern officials departed, leaving the Supreme Court with only one justice to carry on the judicial business of the territory. The remaining officials were Brigham Young, the Governor; Zerubbabel Snow, Associate Justice; Seth M. Blair, District Attorney; and Joseph Heywood, the United States Marshal.

Shortly after the departure of the Eastern officials, from Salt Lake City, a murder trial was held which was to be the beginning of the altercation between the territorial and
federal concerning jurisdiction in territorial laws. A short time after this, the probate courts were given criminal and civil jurisdiction beyond that of settling wills and estates. This was done to help take some of the judicial load off Judge Snow who was doing the work for three justices. This power was to be the main source of the judicial in the territory. The first real trouble in this respect arose in the trial of Judge Drummond before a probate court, which, he contested, did not have the authority to try him, in that it did not have criminal and civil jurisdiction. He was pressing the issue in the Territorial Supreme Court when he dropped the charges in an apparent compromise. It probably was this that caused him to be so bitter. Due principally to his reports, an army was later sent to Utah to subdue the rebellious Mormons and install newly appointed officers.

With the army came new civil authorities, who were not friendly to the power of the probate courts. At every chance they attacked the probate courts and the territorial law enforcement officers. These judges remained only a few years, when they were replaced by a set of more friendly judges. These judges found it possible to allow the district courts and the probate courts to co-exist with equal power in regards to territorial matters.

These judges remained but a few years when they were replaced. In 1870 the probate Courts and the offices of territorial marshall and attorney general came to an end through the
vigorous actions of the new judges. Sitting as a Supreme Court, these new judges ruled the territorial officials out of power. However, the United States Supreme Court ruled the territorial marshal and attorney general to be legal in 1873. In 1874 the Poland Laws were passed, which dissolved these offices and caused the probate court to revert back to its original status, that of settling wills and estates.