36TH CONGRESS, 1st Session. | SENATE. | Ex. Doc. No. 32.

MESSAGE

OF

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate, the correspondence between the judges of Utah and the Attorney General or President, with reference to the legal proceedings and condition of affairs in that Territory.

APRIL 4, 1860.—Read, and ordered to lie on the table. Motion to print referred to the Committee on Printing.

APRIL 9.—Report in favor of printing the usual number sumbitted, considered, and agreed to.

To the Senate of the United States:

I herewith transmit to the Senate a report of the Attorney General, in answer to a resolution of the Senate of the 21st March, "that the President be respectfully requested to communicate to the Senate the correspondence between the judges of Utah and the Attorney General or the President, with reference to the legal proceedings and condition of affairs in the Territory of Utah."

JAMES BUCHANAN.

WASHINGTON CITY, *April* 3, 1860.

ATTORNEY GENERAL'S OFFICE,
March 28, 1860.

SIR: I have the honor to transmit all of the correspondence now on file in this office, "between the judges of Utah and the Attorney General or President, with reference to the legal proceedings and condition of affairs in the Territory of Utah," as called for by the resolution of the Senate of March 21, 1860. The correspondence consists of:

1. A letter from the Hon. John Cradlebaugh and the Hon. Charles E. Sinclair, associate justices of the supreme court of Utah Territory, to the President, dated April 7, 1859.

2. A letter from the Attorney General to Judges Cradlebaugh and Sinclair, dated May 17, 1859.

3. A letter from Judges Cradlebaugh and Sinclair to the President, dated July 16, 1859.

Finding in these letters frequent allusions to the course pursued by the United States attorney for the Territory of Utah, and to his correspondence with this office, I have deemed it proper to transmit a copy of my letter of instructions to that officer, dated May 17, 1859, and also of the letter of the district attorney, of November 15, 1859, in reply to the charges preferred against him, with the accompanying papers.

Yours, very respectfully,

J. S. BLACK.

The PRESIDENT.

ATTORNEY GENERAL'S OFFICE,
May 17, 1859.

GENTLEMEN: The President has received your joint letter, on the subject of the military force with which the court for the second district of Utah was attended, during the term recently held at Provo City. He has carefully considered it, as well as all other advices relating to the same affair, and he has directed me to give you his answer.

The condition of things in Utah made it extremely desirable that the judges appointed for that Territory should confine themselves strictly within their own official sphere. The government had a district attorney, who was charged with the duties of a public accuser, and a marshal, who was responsible for the arrest and safe-keeping of criminals. For the judges, there was nothing left except to hear patiently the causes brought before them, and to determine them impartially, according to the evidence adduced on both sides. It did not seem either right or necessary to *instruct* you that these were to be the limits of your interference with the public affairs of the Territory, for the executive never dictates to the judicial department. The President is responsible only for the appointment of proper men. You were selected from a very large number of other persons, who were willing to be employed on the same service, and the choice was grounded solely on your high character for learning, sound judgment, and integrity. It was natural, therefore, that the President should look upon the proceedings at Provo with a sincere desire to find you in all things blameless.

It seems that, on the 6th of March last, Judge Cradlebaugh announced to the commanding officer of the military forces that on the 8th day of the same month he would begin a term of the district court at Provo, and required a military guard for certain prisoners, to the number of six or eight, who were then in custody, and would be tried at Provo. The requisition mentions it as a probable fact, that "a large band of organized thieves" would be arrested, but the troops were asked for without reference to them. Promptly responding to this call, the commanding general sent up a company of infantry, who encamped at the court-house, and soon afterwards ten more companies made their appearance in sight, and remained there during the whole term of the court. In the meantime, the governor of the Ter-

ritory, hearing of this military demonstration upon a town previously supposed to be altogether peaceful, appeared on the ground, made inquiries, and seeing no necessity for the troops, but believing, on the contrary, that their presence was calculated to do harm, he requested them to be removed. The request was wholly disregarded.

The governor is the supreme executive of the Territory. He is responsible for the public peace. From the general law of the land, the nature of his office, and the instructions he received through the State Department, it ought to have been understood that he alone had power to issue a requisition for the movement of the troops from one part of the Territory to another; that he alone could put the military forces of the Union and the people of the Territory into relations of general hostility with one another. The instructions given to the commanding general by the War Department are to the same effect. In that paper, a "*requisition*" is not spoken of as a thing which anybody except the governor can make. It is true that, in one clause, the general is told that if the governor, the judges, or the marshal shall find it necessary to *summon directly* a part of the troops to aid either in the performance of his duty, he (the general) is to see the *summons* promptly obeyed. This was manifestly intended to furnish the means of repelling an opposition which might be too strong for the civil *posse*, and too sudden to admit of a formal requisition by the governor upon the military commander. An officer finds himself resisted in the discharge of his duty, and he calls to his aid first the citizens, and if they are not sufficient, the soldiers. This would be directly summoning a part of the troops. A *direct summons* and a *requisition* are not convertible terms. The former signifies a mere verbal call, upon either civilians or military men, for force enough to to put down a present opposition to a certain officer in the performance of a particular duty, and the call is to be always made by the officer who is himself opposed, upon those persons who are, with their own hands, to furnish the aid. A requisition, on the other hand, is a solemn demand, in writing, made by the supreme civil magistrate upon the commander-in-chief of the military forces for the whole or a part of the army to be used in a specified service. In a Territory like Utah, the person who exercises this last-mentioned power can make war and peace when he pleases, and holds in his hands the issues of life and death for thousands. Surely it was not intended to clothe each one of the judges, as well as the marshal, and all his deputies, with this tremendous authority. Especially does this construction seem erroneous when we reflect that these different officers might make requisitions conflicting with one another, and all of them crossing the path of the governor.

Besides, the matter upon which Judge Cradlebaugh's requisition bases itself was one with which the judge had no sort of official connection. It was the duty of the marshal to see that the prisoners were safely kept and forthcoming at the proper time. For aught that appears, the marshal wanted no troops to aid him, and had no desire to see himself and his civil *posse* displaced by a regiment of soldiers. He made no complaint of weakness, and uttered no call for assistance. Under such circumstances, it was a mistake of the judge to interfere with the business at all.

But, assuming the legal right of the judge to put the marshal's business into the hands of the army without the marshal's concurrence, and granting, also, that this might be done by means of a requisition, was there, in this case, any occasion for the exercise of such power? When we consider how essentially peaceable is the whole spirit of our judicial system, and how exclusively it aims to operate by moral force, or, at most, by the arm of civil power, it can hardly be denied that the employment of military troops about the courts should be avoided as long as possible. *Inter arma silent leges*, says the maxim; and the converse of it ought to be equally true, that *inter leges silent arma*. The President has not found, either on the face of the requisition, or in any other paper received by him, a statement of specific facts strong enough to make the presence of the troops seem necessary. Such necessity ought to have been perfectly plain before the measure was resorted to.

It is very probable that the Mormon inhabitants of Utah have been guilty of crimes, for which they deserve the severest punishment. It is not intended by the government to let any one escape against whom the proper proofs can be produced. With that view, the district attorney has been instructed to use all possible diligence in bringing criminals of every class and of all degrees to justice. We have the fullest confidence in the vigilance, fidelity, and ability of that officer. If you shall be of opinion that his duty is not performed with sufficient energy, your statement to that effect will receive the prompt attention of the President.

It is also very likely that public opinion in the Territory is frequently opposed to the conviction of parties who deserve punishment. It may be that extensive conspiracies are formed there to defeat justice. These are subjects upon which we, at this distance, can affirm or deny nothing. But, supposing your opinion upon them to be correct, every inhabitant of Utah must still be proceeded against in the regular legal and constitutional way. At all events, the usual and established modes of dealing with public offenders must be exhausted before we adopt any others.

On the whole, the President is very decidedly of opinion:

1. That the governor of the Territory alone has power to issue a requisition upon the commanding general for the whole or a part of the army.

2. That there was no apparent occasion for the presence of the troops at Provo.

3. That if a rescue of the prisoners in custody had been attempted, it was the duty of the marshal, and not of the judges, to summon the force which might be necessary to prevent it.

4. That the troops ought not to have been sent to Provo without the concurrence of the governor, nor kept there against his remonstrance.

5. That the disregard of these principles and rules of action has been, in many ways, extremely unfortunate.

I am, very respectfully, yours, &c.,

J. S. BLACK.

Hon. J. CRADLEBAUGH,
Hon. CHAS. E. SINCLAIR,
Associate Justices Supreme Court, Utah.

CAMP FLOYD, UTAH TERRITORY,
April 7, 1859.

SIR: Recent important events which have transpired in this Territory, in connection with the late session of the United States district court for the second judicial district, which convened at Provo on the 8th ultimo, and the employment of a portion of the military force stationed here, upon the requisition of the judge of that district, "to aid him in the performance of his duties," in our judgment, render it proper that we should make this special communication to you on the subject. Whilst we are fully aware of the lines of separation between the different departments of government—legislative, executive, and judicial—and the importance of observing them, yet the anomalous condition of affairs in this distracted Territory, we think, justify us in communicating directly with the Chief Magistrate, during our terms of office, upon matters affecting the general interests and honor of the country.

There are no statutes here providing for the payment of the expenses of the courts of the United States whilst sitting in the exercise of territorial jurisdiction, nor any provision whatsoever for the confinement and subsistence of offenders against the territorial criminal code.

The means of the masses, drawn by taxation from them, in other well-regulated communities, are in this, by the operation of their ecclesiastical tithing laws, diverted from the maintenance of good government, are thrown into the coffers of the Mormon Church, controlled by "leaders to whom they seem to have surrendered their judgment," and who assume to themselves legislative, executive, and judicial powers. Thus your excellency will perceive how, at the outset, courts of justice are paralyzed here, and may well account for the extraordinary facts which we shall now proceed to present on this subject.

At the last session of the legislature we understand that a law was enacted providing that any prosecutor in a criminal case, where conviction failed, should pay the expenses of the prosecution.

Your excellency will at once perceive the object of this statute; and we take occasion to say that it was, without doubt, enacted in reference to the case of the murder of a deaf and dumb boy by a policeman, which was examined into by the judge of the third district, the prisoner committed to close confinement, and bail refused.

The grand jury, composed of a majority of Mormons, ignored the bill, against abundant evidence to support the finding. Had the law referred to been then in force, the prosecutor in that case would have been mulcted in enormous costs.

In the second judicial district for more than two years no court had been held having lawful cognizance of criminal matters. During that period, embracing more particularly the time of open rebellion here against the government of the United States, crime after crime had been committed—some of them indeed appalling—and the criminals had not only not been punished, but were upheld by the sentiment of the Church authorities, who held in complete subservience their adherents. None of these crimes were in any way connected with that of treason, nor covered by the proclamation tendering pardon.

On the sixth day of March the judge of the second district addressed the following letter to Assistant Adjutant General Porter:

CAMP FLOYD, UTAH TERRITORY,
March 6, 1859.

SIR: I hold a term of the district court for the second judicial district, at the city of Provo, commencing on the 8th instant. Six or eight persons have been committed, and are in the guard-houses of the camp for crimes against the laws of the national as well as territorial government. A warrant has also been issued for a large organized band of thieves, who are charged with stealing government animals, and who will probably be arrested early in the coming week. Certainty of punishment being the surest preventive of crime, and having no prison within my district in which to secure said offenders that they may be brought to justice, the public interest, as well as my duty, requires that the prisoners alluded to be transmitted to the place of trial, and there kept under military guard until their cases are disposed of. I feel confident that, without such aid, the court will be unable to bring said persons before the court and secure their answering to the crimes alleged against them. I therefore request that sufficient force for the purposes indicated be detailed for such service.

Very respectfully,

JOHN CRADLEBAUGH,
Ex-officio Judge Second Judicial District Court, U. T.

F. J. PORTER,
Assistant Adjutant General.

Under the sanction of that portion of the instructions of the commanding general, which says "Should the governor, the *judges*, or marshal of the Territory find it necessary directly to summon a part of your troops to aid either in the performance of his duties, you will take care that the summons be promptly obeyed," this requisition was complied with, and the prisoners, in charge of a guard composed of a company of the tenth infantry under the command of Captain Henry Heth, were taken to Provo, and there held in charge awaiting the orders of the court. The officers and soldiers of this command during the time they were employed in this service behaved with the utmost propriety, and no right of any citizen was in any manner infringed.

Whilst these troops were so stationed, his excellency Governor Cumming visited the town of Provo, where the court was in session, and on the 20th of March, addressed an official request to the commanding general for the withdrawal of the troops outside of the limits of the town, which limits extended several miles on either side. Compliance with this request would have resulted in the breaking up of the court, and in obstructing the administration of justice, as indicated by the suggestions contained in the letter of the judge of the second district to Assistant Adjutant General Porter, before recited.

Justly apprehending, from official information, which was corroborated by our own observation and knowledge, resistance to the small force there, a supporting command had been sent out, and encamped within four miles of the town wall, the purpose of which had been pre-

viously explained to the citizens to be a precautionary movement to prevent the evil disposed from involving the better disposed of the citizens in a collision with the troops. The effect was most salutary in preventing any outbreak. This command, also, his excellency required should be withdrawn.

The general commanding declined to comply with this requirement, and on the 27th day of March, 1859, Governor Cumming, in the style of a proclamation, issued a protest, addressed to the people at large, against these military movements in aid of the administration of justice. The effect of such a protest, under such circumstances, upon the Mormon people, the army, and the judge, will be readily perceived by your excellency. During the session of the court, the grand jury occupied two weeks time, finally showing themselves unwilling to investigate and report upon the varied and numerous crimes referred to, some of which had been committed within sight of the place where the court was held. The judge was compelled to adjourn them. Afterwards, it was discovered that a large proportion of the grand jury were implicated in many of the most atrocious murders, and soon afterwards they fled to the mountains in fear of just punishment for their crimes.

It is proper also to say that the grand jury referred to was organized under the law of last session, enacted by the governor and legislative assembly, which placed the panel completely under the control of the Mormon authorities, their county courts having been designated to select it upon venire issued by the judges. The greater portion of the male population in the settlements adjacent to Provo, including presidents of stakes, bishops, and teachers in the Mormon Church, and territorial officers, have taken to flight for the same cause. Doubtless it may be urged by these people and their sympathizers that this general *stampede* was under terror, and carries with it no evidence of guilt; but such is not the case, for a chain of circumstances has been elicited by the proceedings of the court at Provo, conclusively showing that the various murders and massacres, specially referred to in the charge of the judge, and other crimes, were committed by a confederacy of the church authorities, involving the whole community of the judicial district and others beyond it as accessories either before or after the fact. The production of testimony was most difficult, and could only be obtained by the utmost caution. Those persons who did unburden themselves of the painful truths in their knowledge concerning these crimes, were threatened and intimidated by the Mormon authorities, and were compelled to fly from reasonably expected violence to the protection of the camp. Many of them are now here in imminent peril of their lives beyond military protection.

Witnesses, under the obvious influence of fear, have burst into tears in open court on account of being compelled to testify to the horrid crimes of which they had knowledge, and many have been compelled to sacrifice what little property they possessed at half its value, satisfied that they would be robbed of it by the community, to leave their wives, children, and home, and seek protection in this camp.

With all these facts before us, it is a matter of deep surprise to us to find, in the requisition of Governor Cumming upon General Johnston for the withdrawal of the support that he had furnished the court,

the statement that he announced with pleasure, that after careful observation he was satisfied "that the presence of military force in that vicinity was unnecessary."

The court adjourned on the 4th instant, and several criminals charged with murder have been committed, after preliminary examination, for trial. They are now held in safe custody under guard.

That the difficulty should have arisen between the *judiciary* and *executive* is deeply to be deplored. Harmonious coöperation was greatly to have been desired, and its value has been enhanced by the horrid disclosures which have been made.

His excellency Governor Cumming does not seem to have taken the proper distinction between the *execution* of the laws and the *administration* of the laws. In the administration of the laws, he can have no concern whatever, and, when he seeks to interfere, he invades the rights and powers of an equal coördinate and *independent* department of the government. When the judgments of the courts have been pronounced, they stand as law, unless reversed by a competent appellate tribunal, and it is the duty of the governor to see the laws faithfully *executed*. The judiciary relies upon the executive to take care that its judgments and decrees are faithfully executed, but it cannot permit any dictation in the administration of justice from any source. Appellate tribunals are open for a reversal of its proceedings if wrong.

In the *execution* of the laws, we conceive that it is the function of the governor to call out a *posse comitatus*, and this we conceive also to be the meaning and spirit of his instructions.

Surely the government, in the condition of affairs existing when the territorial government of Utah was reorganized, and an armed force sent forward to protect it, intended to preserve a *consistency* between the instructions of the military commandant and the chief executive officer of the Territory, and we are bound to presume that the instructions of each were prepared with reference to each other, and underwent the consideration of grave cabinet council. How else this consistency can be established when the commanding general is instructed that in no case will he disobey the requisitions of the governor, *judges*, and marshal for a part of his troops "to aid them in the performance of their duties," we are unable to perceive.

The position of General Johnston, in a military point of view, cannot be controverted, because he acts by the orders of his appropriate department; but we argue that there is consistency between his instructions and those emanating from the State Department to his excellency Governor Cumming; and further, that the general, had he complied with the governor's requisition referred to, would have, instead of aiding the judiciary in the administration of justice, in point of fact, obstructed it.

We beg leave to bear testimony to the combination of great military skill and judgment with high civil qualities, which General Johnston has exhibited in the delicate position which he has occupied here, and to the perfect respect to the civil rights of the citizens of this Territory, which has everywhere been observed by his command, and its detachments on special service

In conclusion, we beg to assure your excellency that we have not

been unmindful of the confidence reposed in us, and have sought, without fear, favor, or affection, to enforce unconditional subjection to the laws.

If, by this course, we have incurred hatred, resentment, and personal abuse from those whose crimes we have sought to bring to light and punish, we feel that these fall upon us on account of our earnestly attempted faithfulness to the commissions we bear.

We have had no bias except that which is in favor of justice, the punishment of crime, and the preservation of the dignity and honor of the government. In our official course, we have sought to maintain these at all hazards.

We are, with due respect, your obedient servants,

JOHN CRADLEBAUGH,
CHARLES E. SINCLAIR,
Associate Justices Supreme Court, Utah Territory.

His Excellency JAMES BUCHANAN,
President of the United States.

ATTORNEY GENERAL'S OFFICE,
May 17, 1859.

SIR: Your letters of March 24 and April 8, addressed to me, have been received. The grave importance of the facts contained in them, and in other communications from Utah by the same mail, required that the whole correspondence of the several departments with the officers of the Territory should be laid before the President. He has carefully considered the subject, and his opinion will be found expressed in a letter from me to the two associate justices of the Territory, a copy of which I send you.

You are clothed with the authority of a public accuser for the Territory. It is your duty to commence and carry on all public prosecutions with such aid and assistance as you see proper to call in. On proper occasions, and in a proper and respectful manner, you must oppose every effort which any judge may make to usurp your functions. Do not allow your rights to remain unasserted. If the judges will confine themselves to the simple and plain duty imposed upon them by law of hearing and deciding the cases that are brought before them, I am sure that the business of the Territory will get along very well. This must be impressed upon their minds, if possible; for if they will insist upon doing the duties of prosecuting attorney and marshal as well as their own, everything will be thrown into confusion, and the peace of the Territory may be destroyed at any moment.

But your duty must be performed with energy and impartiality. Every crime that is committed, no matter by whom, should be exposed and punished. I need not say that you are to make no distinction between Gentile and Mormon, or between Indian and a white man. You will prosecute the rich and the poor, the influential and the humble, with equal vigor, and thus entitle yourself to the confidence of all.

It is only by these general remarks that I can express the wishes of the President with reference to your office; for, at this distance, it is impossible to give you detailed instructions. But there is one subject to which I would call special attention. It appears that a company of emigrants from Arkansas to California was attacked at the Mountain Meadows, three hundred miles south of Salt Lake, and one hundred and nineteen cruelly murdered, none being spared except some children, all of whom were under seven years of age. This crime, by whomsoever committed, was one of the most atrocious that has ever blackened the character of the human race. The Mormons blame it upon the Indians, and the accusation receives some color from the fact that all the children who survived the massacre were found in the possession of Indians. Others, and among them a judge of the Territory, declare their unhesitating belief that the Mormons themselves committed this foul murder. All the circumstances seem, from the correspondence, to be enveloped in mystery. In your letter the manner of the murder is described, showing that the emigrants were attacked within a corral, which they had formed for defense; that they agreed to surrender their arms upon the promise that their lives should be spared; and after doing so, were all of them treacherously butchered. Why does the information stop there? If that much be known, how is it that we know no more? Who were the parties that received this surrender, and how is it proved? Cannot the superintendent of Indian affairs, or some one connected with that part of the public service, trace back the children from the Indians, in whose possession they were found, to the corral where their parents were slain? It is said that some of the Mormon inhabitants of Utah have property of the emigrants in their possession. If this be true, will it not furnish a thread which, properly followed, would lead back to the scene of the crime?

These are mere suggestions, which are intended to show the interest of the government in the subject, rather than to instruct you in the performance of your duty. It is, however, confidently expected of you that you will intermit no watch nor let any opportunity escape you of learning all that can be known upon this subject. If you shall be under the necessity of employing agents, such reasonable expenses as you may be put to on that account will be paid.

Your conduct at Provo seems, from all accounts of it, to have been perfectly proper, and is fully approved by the President. Your refusal on a former occasion to violate the promise of pardon contained in the President's proclamation was equally praiseworthy and correct.

I am, very respectfully, yours, &c.,

J. S. BLACK.

ALEXANDER WILSON, Esq.,
United States District Attorney, Utah Territory.

GREAT SALT LAKE CITY, UTAH TERRITORY,
July 16, 1859.

SIR: We have received a communication from the Hon. J. S. Black, Attorney General for the United States, under date of 17th May, conveying an answer to our joint letter to your excellency of the 7th April last. The tenor and conclusion of this reply make it necessary for us, in vindication of our official position, more fully to address you on the same subject. It was not our purpose to embrace in our letter a full history of the *Provo* affair. We designed merely to state certain facts peculiarly within the knowledge of the judge who held the late term of the United States court there, and to express an opinion as to the necessity for the force which was furnished by the commanding general in aid of the administration of the laws.

The military details had been fully reported by the general to the War Department, and, we presumed, would be laid before your excellency.

According to the theory of our government, we have no official connection with the Executive, and we were careful to state that only the "anomolous condition of affairs in this distracted Territory would justify us in communicating directly with the Chief Magistrate, during our terms of office, upon matters affecting the general interest and honor of the country."

We are in nowise subject to animadversions on our judicial conduct by the Attorney General, nor to admonition from any quarter. Our communication, however, has been made the basis for a reply, embracing an opinion upon the matters involved, both in their judicial and military relations; and we are informed that our letter had been carefully considered, as well as "all other advices relating to the same affair." Copies of the document were inclosed to the governor and district attorney, and it has been extensively published throughout the country. A letter of the same date, to the attorney, we find in the Constitution of the 11th June, conveying to him certain instructions from the Attorney General, and embracing also comments upon our judicial action in this Territory. No copy was inclosed to us, though we take this publication to be one authorized by the Attorney General, and we shall beg leave to comment on it, as an official paper, in this connection.

The Attorney General says: "The condition of things in Utah made it extremely desirable that the judges appointed for the Territory should confine themselves strictly within their own official spheres. The government had a district attorney, who was charged with the duties of a public accuser, and a marshal, who was responsible for the arrest and safe-keeping of criminals. For the judges there was nothing left except to hear patiently the causes brought before them, and to determine them impartially, according to the evidence adduced on both sides. It did not seem either right or necessary to instruct you that these were to be the limits of your interference with the public affairs of the Territory, for the executive never dictates to the judicial department." If this language means to charge that we have not

conformed to the reasonable expectation it expresses, the information upon which the Attorney General bases the complaint certainly emanated from other than proper official sources, so far as we are informed; and come from whatever source it may, with all respect for your excellency, we oppose to it our unqualified denial. On the 6th March last, Judge Cradlebaugh addressed a letter to the commanding general, requesting a detail of sufficient force to transmit certain prisoners, then confined in the guard-houses of the camp, to the place of trial, and keep them under guard until their cases could be disposed of. This is the only call which the judge made upon the military, "to aid him in the performance of his duties," during the whole affair. There was no public jail in the district, nor any provision, by law, for the confinement and subsistence of prisoners charged with criminal offenses. Indeed, the whole design of the legislature, since the organization of the Territory, seems to have aimed at an utter exclusion of the federal authorities from other than nominal jurisdiction.

Two deserters, who were then undergoing the punishment adjudged by a military tribunal, were called for by competent authority as witnesses for the government in a criminal prosecution arising under the law of the United States against enticing the desertion of soldiers. It was a military necessity that a sufficient guard should be sent with these witnesses; and General Johnston has himself stated in his dispatches of the 31st March, 1859, now on file in the War Department, that this movement was necessary, and that he should have felt it his duty to send over a military force, whether asked for by the judge or not. The supporting command was sent forward by the commanding general upon a report from Captain Heth—the statement of facts contained therein being concurred in by the judge—and encamped, not in sight of the court-room, but *four* miles distant from Provo. It was not sent "soon afterwards." Two weeks session of the court had intervened. In the meantime, the sentinels of the small camp at Provo had been abused and stoned by citizens there, and threatening demonstrations made, inducing a well-founded belief of meditated violence.

The troops at Provo did not surround the court-house. They were encamped near, and one side of it, upon a lot belonging to the house which had been rented by the United States marshal for the use of the government. The ground was furnished by the marshal, and they encamped there not only by his permission, but at his request.

In regard to the letter of Judge Cradlebaugh, of the 6th March, the Attorney General states:

"Besides, the matter upon which Judge Cradlebaugh's requisition bases itself was one with which the judge had no sort of official connection. It was the duty of the marshal to see that the prisoners were safely kept and forthcoming at the proper time. For aught that appears, the marshal wanted no troops to aid him, and had no desire to see himself and his civil *posse* displaced by a regiment of soldiers. He made no complaint of weakness, and uttered no call for assistance. Under such circumstances, it was a mistake of the judge to interfere with the business at all."

At the time Judge Cradlebaugh requested the military guard, the marshal for the Territory was not in the second judicial district. He

resides at Salt Lake City, and met the court at Provo the first day of the term. The geographical features of the Territory are peculiar, embracing a succession of mountain-locked valleys, running hundreds of miles north and south, in which the settlements are situated. It is impossible for the marshal, or any one of a reasonable number of deputies, to be on hand at all times, attending the preliminary wants of the three courts. Leaving this out of view, however, we cannot see that the judge was out of his proper sphere in making his call, for surely it was "to aid him in the performance of his duties" that the troops were sent to convey the prisoners to the place of trial. Had there been no marshal in Utah, surely the ends of justice ought not to have been defeated because, according to the view of the Attorney General, it was proper for him only to make the call. If the marshal could make it, *a fortiori*, the judge, whose officer he is, and to whose authority he is subject, had the power to do so. Provo is fifty miles distant from Camp Floyd. In case a rescue had been attempted, it could have been effected long before the marshal could have made his request to the governor, his requisition been complied with, and the troops marched to the scene of resistance.

The governor resides at Salt Lake City, also fifty miles from Provo. The necessity arose, too, when the marshal could not be conferred with in time to act. So far from this action having operated to supplant him, it had his warm concurrence and support, as hereafter will appear.

After the company under Captain Heth reached Provo, the prisoners were delivered over to the marshal, as they were called for, *he* being in constant attendance on the court, and when remanded, were remanded to *his* custody, and by *him* delivered to the guard. *He* employed, on *his* own summons, the military guard-houses of the camp as a prison.

No prisoner, after *he* came before the judge, was committed by *mittimus* to any other custody than that of the marshal. The judge never made a call for troops to act as a *posse comitatus;* this call *was* made by the marshal in his own name and on his own responsibility, and the aid furnished and employed by him. The marshal always advanced with a civil posse in his efforts to arrest, and the troops were so posted as to be enabled to afford aid to him, in case resistance before, or a rescue after, arrest had been attempted. The advices relating to the same affair, forwarded by the general commanding, and on file in the War Department, show, in ample detail, all these facts to have existed.

Moreover, long anterior to the sitting of the court, the judge had issued warrants to the marshal for the apprehension of a number of persons against whom affidavits had been made, charging various murders, and the marshal made oath before the judge that he could not execute these warrants without military aid.

In December last, the judge certified this oath to the governor, and the marshal requested him to issue a requisition for troops for this service. The governor complied, and placed his requisition at the disposal of the marshal. Afterwards, changing his opinion, he withdrew it, and up to the time of the sitting of the court no arrests were made or attempted.

With what justice, then, can it be charged, in the face of these facts,

that the judges ever attempted "to do the duties of a marshal, as well as his own?" The marshal *did* "want troops to aid him;" he *did* "complain of weakness;" he *did* "utter calls for assistance."

In respect to the construction which the Attorney General lays down as applicable to the instructions, respectively, of the chief executive of the Territory and the commanding general, we submit that we have no concern whatever, nor can we admit his right to read us any lecture upon them.

Neither of us had ever seen either set of instructions, nor knew the purport of either, until after the governor had visited the town of Provo, and all the military movements had been made which were made during the whole affair. How, then, can we be held responsible for a proper interpretation of the meaning of these instructions, and action thereon conformable to the *policy* of the administration? Judges are not presumed to take cognizance of administrative policy.

The instructions to each emanated from the Executive, through different channels only, contain his directions, and are purely matters of administration.

In the order of the 6th May, with an official copy of which we have been furnished, modifying the instructions to the general, and stating that "peace being now restored to the Territory," the *judicial administration* of the laws will require no help from the army under his command, "*the fidelity with which he has obeyed the instructions heretofore given*" *him* is especially commended. The conclusion from this is, that the military movements made by him have received the Executive approval, and that the technical distinction between a "*summons* not to be disobeyed" and a "*requisition*" was not taken. We are still unable to perceive any distinction, and conclude that the instructions were given to place material assistance at the disposal of the courts, to aid them in the performance of their duties. If the original instructions did justify the giving aid to the judiciary, and keeping it at Provo against the governor's remonstrance, we do not perceive why any modification of the general's instructions was necessary, nor why the proper rule of construction was not laid down, and corresponding action ordered. But this is a matter with which the judiciary has nothing to do whatever. It is a military question, which has been decided in favor of the general, and the decision communicated through the only executive channel to which he can look. As to the justification which Judge Cradlebaugh has for his action, we refer to the statements made in our letter of 7th April, and "other advices relating to the same affair" on file in the War Department.

Judges are presumed to know whether their courts need aid better than those who have no concern in the administration of justice. The court thought, and still thinks, the exigency justified the employment of the troops. The governor, who came upon the spot, and "made inquiries" of the very men whose crimes were being disclosed, became convinced to the contrary. We think it was a matter with which he had "no sort of official connection," so long as the general's instructions were unmodified, and the judiciary free from executive dictation.

Our views upon this subject are fully stated in the opinion of Judge McLean, in the case of the United States *vs.* Guthrie, reported in 17

Howard, 284; and we take from that opinion the following extracts, to show the relation of independence which we sustain towards the governor:

"It is argued that as the President is bound to see the laws faithfully executed, the power to remove unfaithful or incompetent officers is necessary. This may be admitted to be a legitimate argument, as commonly applied to executive officers. My own view is, that the power to see that the laws are faithfully executed, applies chiefly to the giving effect to the decisions of the courts when resisted by physical force. But, however strongly this may refer to the political officers of the government, how can it apply to the judicial officer?

"In the nature of his office, the President must superintend the executive departments of the government. But the judiciary constitutes a coördinate branch of the government over which the President has no superintendence and can exercise no control. So far from this department being subject to the Executive, it may be called to pass on the legality of his acts. The President, like all other officers of the government, is subject to the law, and cannot violate it with impunity. He is responsible for the infraction of private rights, and before a territorial court the same as before the other courts of the Union. In no just and proper sense can the President be required to see that the judicial power shall be carried out, except as controlling the physical power of the Union.

"The effects of the control of the judicial by the executive power are seen in the history of England during the reign of the Stuarts. The most insupportable tyranny and corruption were realized under this paramount power of the executive government. It has always been the corrupting power of all free grovernment. This in a great degree arises from the extent of its powers and patronage. And in the formation of our government great care was taken to place the judicial power on an independent basis. Being without patronage, and discharging the most onerous and delicate duties, nothing but a high and impartial discharge of its functions can sustain it.

"Whenever any portion of the judicial power shall become subject to the executive, there will be an end of its independence and purity. It will become the register of executive decrees and of a party policy. What could create a deeper degradation than to see any branch of the judiciary, which stands between the executive power and the rights of the citizen, become the mere instrument of that power."

The Attorney General says: "That, in a Territory situated like Utah, the governor can make war and peace when he pleases, and holds in his hand the issues of life and death for thousands. Surely it was not intended to clothe each one of the judges, as well as the marshal and all his deputies, with this tremendous authority. Especially does this construction seem erroneous when we reflect that these different officers might make requisitions conflicting with one another, and all of them crossing the path of the governor."

We submit that the exercise of the general *discretion* with which his instructions clothe the commanding general, respecting the employment of his troops, would have effectually prevented the collisions suggested by the Attorney General as possible of occurrence. The

ability and prudence which General Johnston has on all occasions manifested, furnished a reliable barrier against such an improbable event.

The doctrine that the executive of a Territory can make war and peace *when he pleases*, and holds in his hands the issues of life and death for thousands, is one political in its nature and strange to us. Its practical operation would overturn all our established notions of a separation of the powers of government, and convert an Executive, the legality of whose official acts are subject to judicial inquiry, and who is bound in all things by the Constitution and laws, into an emperor, whose will would be law and whose character that of a despot.

The encroachments of the executive upon the other divisions of government in the memorable struggles of '98, and the perils to personal liberty which the issues of that day involved, we supposed had been finally condemned by the popular triumph of republican liberty which soon afterwards passed into our national history.

The announcement, at this day, by the Attorney General of the United States, of such principles, tending to a consolidation of power in the executive head, seems, in our judgment, to be a matter of high public concern.

The Constitution declares that "Congress shall have power to declare war." But was there anything like making war in the proceedings at Provo?

Was not a portion of the army of the United States employed in Boston, without consultation with the governor of Massachusetts, in the execution of the fugitive slave law on Anthony Burns, and the federal troops employed in protecting the court-room of Judge Loring?

Was not a portion of the marine force stationed around the polls in Washington, to protect the citizens in the exercise of the elective franchise, and did not blood flow in the streets of that city?

Were not United States troops thrown about the polls in Kansas; and did not the voters who approached the ballot-box—the fundamental source of republican government—pass through a file of soldiers?

In a letter to the governor of Kansas, the Secretary of State, under date 24th August, 1857, says:

"The President approves the precautionary measures you have adopted in calling into the vicinity of Lawrence a military force, to act as a *posse comitatus*, to aid in the enforcement of the laws, should it be necessary."

* * * * * * * *

"When a civil officer has reason to believe that process placed in his hands will be resisted by force, he has the right to call for the aid of such portions of the *posse comitatus* as he may think necessary, and at this point may rightfully commence the action of the military force."

In the instructions to the general commanding the forces here, it was distinctly stated: "Should the governor, judges, or marshal of the Territory find it necessary directly to summon a part of your troops to aid either in the performance of his duties you will take care that the summons be promptly obeyed."

We respectfully submit, that the construction of these instructions

is not a matter of civil inquiry or judicial judgment. Words employed in conveying orders to military persons are not, as a rule, to be restricted to a legal, technical sense, but their meaning should be ascertained by their popular use, and it would be a painful and cruel ordeal to require officers to confine their actions to so rigid an interpretation of language, the effects of which are to be subject to the scrutiny of an attorney general. They are subject to the military law, which is independent in its sphere, and a military court might not accept the conclusions of an attorney general's argument to show that a "summons" *not to be disobeyed*, and a "requisition" are not convertible terms.

The general furnished, under his instructions, the troops sent to Provo, and kept them there against the governor's remonstrance. The Secretary of War says that he has faithfully obeyed those instructions. Now we would respectfully submit, that there was nothing in this case to recommend the Mormons to greater favor than the people of Massachusetts, Kansas, and the District of Columbia. The latter had not declared martial law, and arrayed their whole military forces against the government of the United States; they had not burned and plundered government property, nor robbed and imprisoned in dungeons free citizens of the United States for the reason that they were citizens; nor had they deluged their soil with the innocent blood of men, women, and children. The strong arm of the government reaches into a State and other Territories of the Union; but in Utah, where with the greatest vigor it should be exercised, it is stricken down.

In the letter to the attorney for the territory referred to, the Attorney General states, that "his refusal, on a former occasion, to violate the promise of pardon contained in the President's proclamation was equally praiseworthy and correct." This refers to a portion of the charge of the judge of the third district, delivered in Salt Lake City, on the 22d of November last, upon the subject of treason. The proclamation of the President in that case was not disregarded, and the judge distinctly called the attention of the grand jury to this proclamation, "to the condition of affairs then existing *legally* considered." The Supreme Court of the United States, in the case of the United States *vs.* Wilson, (7 Peters, 150,) fully quoted by the judge in his charge, has laid down the law applicable to pardons, and the legal manner of taking the benefit of them. Upon the authority of that decision his defense would rest, if there were any power existing to call his judgment in question outside the regular course of appeal.

But it would seem that the approval of the action of the attorney for the Territory proceeds upon the *idea* that his intervention arrested the action of the judge and conformed it to the views of the administration. Nothing can be further from the fact. The attorney could never have gone before the grand jury without the consent of the judge, for no principle is better settled than that the grand jury is *exclusively under the control of the court*. And by reference to the remarks made by the attorney to the grand jury, your excellency will find this language: "By *permission* of his honor, Judge Sinclair, I am permitted here, publicly, to give you the reasons why, as prosecuting attorney of the United States for this Territory, I have presented before you no bills of indictment for treason at this court."

In the decision quoted, the Supreme Court distinctly says: "It is a constituent part of the judicial system that the judge sees only with judicial eyes, and knows nothing respecting any particular case of which he is not informed judicially. A private deed not communicated to him, whatever may be its character, whether a pardon or release, is totally unknown and cannot be acted on. The looseness which would be introduced into judicial proceedings would prove fatal to the great principles of justice, if the judge might notice and act upon facts not brought regularly into the cause. Such a proceeding in ordinary cases would subvert the best established principles and overturn those rules which have been settled by the wisdom of ages. Is there anything peculiar in a pardon which ought to distinguish it in this respect from other facts? We know of no legal principle which will sustain such a doctrine." * * * The pardon "may be absolute or conditional. It may be controverted by the prosecutor and must be expounded by the court. These circumstances combine to show that this, like any other deed, ought to be brought judicially before the court by plea, motion, or otherwise."

The proclamation of the President sets out a state of facts which, if true, constituted the crime of treason. The judge could conditionally know nothing of these facts, and considered it his duty, according to the rules laid down in Wilson's case, to call the attention of the grand jury to the subject. What then? The district attorney stated it was not the desire of the government to compel the pleading of the pardon. If the decision of the Supreme Court is law, the judge stands justified; but whether he is or not, it is not for the Attorney General, in a letter to the prosecuting attorney of his court, to indulge in strictures upon his judicial conduct.

The results of the conference of the peace commissioners with the Mormon authorities were facts unknown to the judge, nor had they then been publicly promulgated. He did not suppose that, with a federal governor present, they had made a treaty or a diplomatic adjustment which closed the doors of the courts against all inquiry, or checked the regular course of judicial investigation. This would have been to admit that Brigham Young was a sovereign in Utah, with his counselors of state around him, possessing an empire in the heart of a republic governed by laws and a written Constitution.

That view, however, seems to have been taken of it by these people. Brigham Young, in a politico-religious speech, delivered in the tabernacle on the 22d May last, said: "The church and the kingdom of God has risen from an individual family to a great people, and we have been looked *upon as a nation* by our neighbors, *independent of all other people on the face of the earth, and in their dealings they have dealt with us as such.*"

The manner in which the proclamation is regarded here, is shown by the following extracts taken from a late number of the "Deseret News," the official paper of the Mormon Church:

"Now, while we most willingly award all due credit to Mr. Buchanan and his administration, we do earnestly protest against this incessant exulting by certain journals, over putting an end to the *rebellion* in Utah." * * * * * * *

"It is asked: Did not the people of Utah resist the laws and authority of the government? Our answer is a loud and emphatic No!"

* * * * * * * *

"But, it is urged, did not the people of Utah arm themselves against the authority of the government? We say, again, No!"

In respect to the attorney for the Territory, the Attorney General remarks that he has the fullest confidence in the "vigilance, fidelity, and ability of that officer," but "if we shall be of opinion that his duty is not performed with sufficient energy, our statement to that effect will receive the prompt attention of the President."

It affords us no pleasure to make complaints against any officer connected with us in the government service in this distant Territory. We would prefer unity and harmony of action in the discharge of our several trusts. Yet as the Attorney General invites our opinion as to the efficiency of the district attorney, we have to say, that since his advent into this Territory, last November, he has set on foot no criminal prosecution whatever, although abundant evidence is attainable of mayhems, murders, and robberies, sufficient in number and atrocity to mark the history of Utah for more than two years past as a record of rapine and blood, disgraceful to the age in which we live.

Previous to the session of the court at Provo, he did not set his foot in the district except on one occasion, when he visited Camp Floyd on his own private business.

In civil cases arising out of the invasion of private rights of person and property, coupled with crimes committed by the Mormons during the time of their rebellion, he appears as their counsel to vindicate their conduct.

At the last term for the third judicial district he placed the private papers of the judge into the hands of a Mormon, who was afterwards indicted at the same term for a criminal offense, and acquitted by a Mormon jury against all law and evidence. These papers (containing the private and uncorrected charge of the judge to the grand jury) were published, the morning after they were placed in his hands, in the "Deseret News," a paper which exerts all its power to bring into contempt the federal courts. He congratulated this offender at the close of the trial by offering him his hand. His prosecution was marked with neither vigilance nor ability.

His whole course of conduct has been marked by culpable timidity and neglect, and his relations with the Mormons have been so objectionably manifested by his acts that he has lost our confidence in his willingness and ability to discharge properly and firmly the duties of a public prosecutor in this Territory. Indeed, the Christians and apostates from the church, whom the Mormons here opprobriously call gentiles, will not trust their complaints to his keeping, and seek out the judges to institute preliminary proceedings without his aid.

The Attorney General says, in his letter to the district attorney, that "it is his duty to commence and carry on all public prosecutions," and that he "must oppose the effort which any judge may make to usurp his functions," &c. No judge here has attempted what is here implied. Two criminal cases only, one in each district, have gone to juries since the reopening of the courts here. The crimes charged

were offenses against the United States. Both prisoners were acquitted, and in each case the attorney prepared the indictments and prosecuted in court.

Numerous warrants have been issued for the apprehension of criminals upon affidavits made by persons who have voluntarily presented themselves to institute prosecutions, all of which remain unexecuted. The judge, in these cases, acted as committing magistrate, a duty enjoined on him by the peculiar condition of affairs. We have yet to learn that in such cases the judges must consult the attorney before issuing his warrant, and especially when it may take days to reach him does this idea seem absurd.

The duty of the judge in this matter is enjoined by the revised laws of this Territory.—(Chapter 33, Addenda, section 3.)

"When a complaint is made, under oath, that an offense has been committed, the justice or judge shall issue an order requiring an officer to take all requisite steps to bring the offender before him." The district attorney may appear in the preliminary examination if he pleases, but surely he has no control over the judge in the matter. When a prisoner has been put on his trial, the attorney should appear and prosecute; and in no instance has he been denied appearance, or dictated to in the discharge of his duty. All statements to the contrary are unqualifiedly false.

The advice of the Attorney General to him was, therefore, unnecessary from anything which has yet transpired; and the reflection which it casts upon the judges was as unjust as it was unwarranted. The Attorney General is not our teacher; appeals from our judgment do not go to him; nor is he our trier or impeacher.

The courts, even when aided by the military power, were able to keep up only a semblance of federal authority. Now, not only can no arrests be made, but the executive of the Territory states that his only reliance is, that the church authorities may deliver up the numerous persons charged with crime, for whom warrants have been issued, including those who participated in the horrid massacre at the Mountain Meadows.

Indeed, so far have matters proceeded that propositions have actually been made, through the governor, to the judges, for a surrender by the church of the fugitives, upon *condition* that the judges shall have a certain understanding with them as to the constitution of their juries. Of course all such approaches are indignantly spurned.

In conclusion, we feel it our duty earnestly to protest against the action of the Attorney General in promulgating to the people of this Territory these documents, so calculated to impair the influence and respect which the judiciary ought here, above all other places, to exercise and maintain.

We stand upon the fair history of our judicial conduct, against all misrepresentations and aspersions which may be made against us; and we trust that, with these further explanations to your excellency, taken in connection with all reliable advices relating to the same subject before you, you will perceive the injustice which has been done us, and appreciate the position in which we have been placed.

Although the letters of the Attorney General have received exten-

sive circulation among the people of the United States, and are calculated to injure us in their estimation of our official action, we shall not, at this time, complicate these embarrassing difficulties by making public this communication.

We are, with the highest respect, your obedient servants,

JNO. CRADLEBAUGH,
CHAS. E. SINCLAIR,
Associate Justices of the Supreme Court of Utah.

His Excellency JAMES BUCHANAN,
President of the United States.

WASHINGTON CITY, D. C., *November* 15, 1859.

SIR: Since my arrival in Washington city from the Territory of Utah, on Sunday last, November 13, I learned there was a letter in your department, addressed to the President of the United States, by Judges Jno. Cradlebaugh and Chas. E. Sinclair, associate justices of the supreme court of Utah Territory, bearing date Salt Lake City, July 16, 1859, in which my official actions in Utah were condemned by those judges. This being the first knowledge I had on the subject, and to-day having had an opportunity of perusing said letter, I take the liberty of immediately replying to the animadversions against my official actions therein.

Fully acknowledging my responsibility to the President of the United States and to the Attorney General, with whose department my office brings me in official connection, I feel it my duty, as it is my earnest desire, to give you a full report of my official actions in Utah, both to vindicate myself from the aspersions which have been made against me by the judges, and to give you information of the business done before the courts in that Territory. I arrived in Salt Lake City on the 5th of November, 1858. A term of the district court for the third district had been commenced in October in Salt Lake City, and had adjourned to the 15th of November.

In stating the business before the courts and my connection therewith, I will here adopt the form of a diary, as noted at the time.

Monday, November 15.—Attended court. The adjourned session of the third judicial district court in Great Salt Lake City. Judge Sinclair. Presented commission as United States attorney for Utah Territory. Commission ordered to be enrolled, and admitted as an attorney of the several courts in the Territory. Court adjourned till next Monday, November 22.

Monday, November 22. Attended court. Judge Sinclair read his charge to the grand jury. Grand jury directed to meet and adjourn at the order of the court. Court adjourned till to-morrow.

Tuesday, November 23.—Attended court. Made motion to remove the case of two Indians, Mose and Looking-glass, charged with rape, to the second district, where the offense had been committed, for trial. Motion set for argument to-morrow. Asked the judge for a copy of his charge to the grand jury. Judge replied that he had no copy, and

that the charge was in the hands of the printer, for publication. Court adjourned till to-morrow.

Wednesday, November 24.—Attended court. Argued motion to remove the case of the two Indians, Mose and Looking-glass, to the second district. Motion allowed and order made. Proposed to present bills of indictment to the grand jury in territorial cases. Objected by the territorial attorney, Mr. Stout, who claimed the right to try all territorial cases. Informed by the court that I could communicate with the grand jury only upon their call and the permission of the court. Court adjourned till to-morrow.

Thursday, November 25.—Attended court. Question of jurisdiction raised between the territorial attorney, Mr. Stout, and myself as to which of us had the right to present bills and prosecute offenses against the laws of the Territory. This right claimed exclusively by the territorial attorney, under the statutes of the Territory. Presented a written motion to the court, claiming my right to present bills and prosecute all offenses in the district court, as United States attorney for the Territory. Question of jurisdiction ordered to be argued. Argument set to commence to morrow. Court adjourned.

Friday, November 26.—Attended court. Argument on the question of jurisdiction commenced on case stated. Not concluded. Court adjourned.

Saturday, November 27.—Attended court. Argument on question of jurisdiction continued; not concluded. Court adjourned till Monday.

Monday, November 29.—Attended court. Grand jury informed by the judge, in answer to a communication previously submitted to him by them, that the grand jury were not to inquire into offenses in Green River county, that being in the first judicial district. Grand jury in same communication had also inquired in regard to their duties on the subject of treason, presented to them in the judge's charge. Requested permission of the court to state my reasons to the grand jury why I presented no bills of indictment to them for treason. Did so. Argument on the question of jurisdiction resumed, and concluded. Court adjourned.

Tuesday, November 30.—Attended court. Judge stated he would defer his decision on the question of jurisdiction until he had examined the authorities cited. Grand jury discharged till Monday, December 13. Court took up the motion of D. H. Burr, to exclude from the bar James Ferguson, Hosea Stout, and J. C. Little. Motion withdrawn by Burr as to Stout and Little. Private affair, and not concerned in it. Judge hearing the case as chancellor.

Wednesday, December 1.—Attended court. Motion to disbar Ferguson before the court. Ferguson charged by Burr with slandering him and intimidating Judge Stiles. Court adjourned till December 3.

Friday, December 3.—Attended court. Motion to disbar Ferguson still before the court. Court adjourned till December 6.

Monday, December 6.—Attended court. Motion to disbar Ferguson still before the court. Court adjourned till December 13.

Monday, December 13.—Attended court. Grand jury requested by the court to inquire whether Judge Stiles had been intimidated in the discharge of his duty. I sent witnesses before the grand jury.

Tuesday, December 14.—Attended court. Grand jury made a presentment against James Ferguson, for using threatening language to Judge Stiles at the February term of the district court in 1857.

Wednesday, December 15.—Attended court. Presented bill of indictment to grand jury, charging James Ferguson with using threatening language to intimidate Judge George P. Stiles in the discharge of his duty at the February term of the district court in Salt Lake City, in 1857. Court adjourned. Attended before the judge as a committing magistrate in the case of N. L. Christianson, charged with killing a deaf and dumb boy, named Andrew Bernard. Not concluded.

Thursday, December 16.—Attended court. The case of Christianson still under examination. Not concluded.

Friday, December 17.—Attended court. The case of Christianson still before the court. Not concluded.

Saturday, December 18.—Attended court. Case of Christianson still under examination. Not concluded. Continued till Tuesday.

Monday, December 20.—Attended court. Argued against the motion to quash the indictment which had been made in the case of James Ferguson. Grand jury returned a true bill for murder against Jeh-pah-we-pah, an Indian, for shooting a man named Vernon, in Rush valley. Warrant issued.

Tuesday, December 21.—Attended court. Argued against plea in abatement to the indictment entered in Ferguson's case. Plea in abatement withdraw by defendant. Motion to quash indictment overruled. Court adjourned. Examination in the case of Christianson resumed and concluded. Christianson committed to answer on a charge of murder.

Wednesday, December 22.—Attended court. Decision of the judge given in the question of jurisdiction between the territorial attorney and myself. Court decided that the United States attorney was the person legally entitled to present bills of indictment and prosecute offenses against the territorial laws in the district court. Also, that the United States marshal was the person legally entitled to serve all process under the territorial laws, in the district court. Presented bills of indictment to the grand jury in territorial cases. Grand jury returned a true bill of indictment against H. Phelps, J. W. Miller, and H. Spears, charged with robbery. Also, a true bill against J. Dolton, charged with horse stealing. Also, a true bill against P. Gutrick and E. Davidson, for robbery. Phelps and Spears entered bail; the other defendants in prison. Ferguson's case further argued on the pleadings. Plea in bar withdrawn, and plea of not guilty entered by Ferguson.

Thursday, December 23.—Attended court. Argued against motion to quash the array of jurors in territorial cases. Motion overruled. Grand jury returned true bill against R. Garvy, charged with horse stealing. Defendant in prison. Ferguson's case continued until January 3. Court adjourned until January 3.

Monday, January 3.—Attended court. Judge not present. Court adjourned by the marshal till to-morrow.

Tuesday, January 4.—Attended court. Presented bill of indictment to the grand jury against N. L. Christianson, charged with the murder

of Andrew Bernard. Grand jury returned the bill against Christianson, "ignored." Defendant discharged. The case of Ferguson further argued on motions for continuance.

Wednesday, January 5.—Attended court. The case of Ferguson further argued on motions for continuance. Motions overruled. Called for a jury in Ferguson's case.

Thursday, January 6.—Attended court. Presented bill of indictment to grand jury against McCormick & Vernon, charged with manufacturing liquor without license. Grand jury returned the bill "ignored." Presented bill of indictment against B. Ingram, charged with larceny. Grand jury returned bill "ignored." Defendants discharged. Grand jury discharged by the court. Challenges by defendant's counsel in Ferguson's case to petit jurors. Challenges set for argument to-morrow. Court adjourned.

Friday, January 7.—Attended court. Argued challenges to petit jurors in Ferguson's case. Challenges overruled. Opened case to the jury. Court adjourned.

Saturday, January 8.—Attended court. Ferguson's case resumed. Testimony commenced to the jury. Not concluded.

Monday, January 10.—Attended court. Ferguson's case resumed. Testimony before the jury concluded on both sides. Court adjourned.

Tuesday, January 11.—Attended court. Argued the case of Ferguson to the jury upon the evidence. Jury retired at two o'clock to form a verdict. At five o'clock the jury came into court and said they could not agree upon a verdict. Jury sent out again, and at eight o'clock they returned a verdict of not guilty. Defendant discharged.

Wednesday, January 12.—Attended court. Requested permission of the court to call up and try the territorial criminal cases. Not granted. Petit jurors discharged. Court adjourned till to-morrow.

Thursday, January 13.—Attended court. Court met and adjourned *sine die* for criminal business. Adjourned until the 17th for civil business.

Monday, January 17.—Attended court. Phelps and Spears entered bail to the next term. Court engaged with motions in civil cases.

Tuesday, January 18.—Attended court. Court adjourned *sine die*.

The above is a brief record of the criminal business which was before the court for the third district in Salt Lake City, at the October term, 1858. I did all in my power to facilitate the business. I made repeated efforts to call up and try the territorial criminal cases before the adjournment of the court, but was afforded no opportunity of doing so, and the court adjourned *sine die*, leaving the prisoners in the city lock-up, which was in charge of the sheriff of the county. The judge adjourned the court, on the ground, as stated by him, that the Territory had provided no funds to defray the expenses of the court while engaged in territorial business. The legislature then in session was known to have a fee bill before them, and which, at the adjournment of the legislature on the 21st of January, became a law.

The prisoners in the lock-up charged with territorial offenses were, on the day of the final adjournment of the district court, discharged from confinement on writs of *habeas corpus* issued from the probate court of Salt Lake county; but of this matter I had no knowledge

whatever until I heard of it the next day after. As the legislature had given the probate courts power equal with the district courts to issue writs of *habeas corpus*, I deemed it necessary, as the judge of the district court would give me no information of what he would do in the premises, that I should be legally informed of the proceedings before the probate court before taking further steps, and I immediately wrote a note to the probate judge requesting a transcript. This transcript I did not get, although I made repeated inquiries, and on the 12th of February made another written request to the judge, until late in the evening of the 18th of February, and at my own expense. The The next morning I gave it to the judge to peruse, and when I received it again on the 23d of February, I suggested to the judge the holding of a special session for the trial of the parties, but receiving no intimation of what he would do, I then took the responsibility of ordering the clerk of the district court to issue warrants to the marshal for the rearrest of the parties, which warrants were returned "not found."

On the 18th of January, the day of the adjournment of the district court in Salt Lake City, I wrote a letter to Judge Cradlebaugh, at Camp Floyd, where he resided, informing him of the adjournment of the court, and stating that I would attend before the second judicial district court, of which he was a judge, as soon as he would inform me of the time and place of holding the same. I received no reply to this letter, and was only informed by a notice published in the newspapers that the second judicial district court would commence at Provo on the 8th of March.

On the 7th of March I went to Provo from Salt Lake City, my place of residence. Judge Cradlebaugh arrived at Provo, from Camp Floyd, his place of residence, on the same evening, the 7th, and the marshal arrived at Provo, from Salt Lake City, his place of residence, on the morning of the 8th. A company of United States soldiers came over from Camp Floyd on the 7th, and on the morning of the 8th were encamped at the court-house. The persons brought by the military as prisoners from Camp Floyd were Robert Kepiton and Alonzo King, charged with larceny at Camp Floyd; Henry Jenkins, charged with stealing a soldier's overcoat at Camp Floyd; and E. F. Jerrold, charged with shooting a soldier with a pistol, and wounding him in the knee, at Camp Floyd. The following persons had entered bail at Camp Floyd for their appearance at court, and were in attendance: David Morgan, charged with buying a soldier's overcoat at Camp Floyd; William Beardshall, charged with buying a pair of soldier's pantaloons at Camp Floyd; and John Cazier, charged with enticing a soldier to desert from Camp Floyd. The marshal brought with him to Provo, on the 8th, Mose and Looking-glass, the two Indians charged with rape, and who had been kept in the penitentiary building in Salt Lake county since the removal of their case from the third to the second district. These two Indians, and Jenkins and Jerrold, were kept in the guard-tents of the military at the court-house; Kepiton and King having been discharged by the judge.

The business which was before the court at Provo, and my connection therewith, I will state in the form of a diary, as noted at the time.

Tuesday, March 8.—Attended court at Provo; district court for the second judicial district. Judge Cradlebaugh. Grand jury impanneled. Judge Cradlebaugh delivered his charge to the grand jury. Grand jury allowed to meet on their own adjournments. I was permitted to attend them. Ordered subpenas for witnesses before the grand jury.

Wednesday, March 9.—Attended court and grand jury. Presented bills of indictment to grand jury against David Morgan and William Beardshall, charged with buying soldiers' clothing at Camp Floyd; Robert Kepiton and Alonzo King, brought from Camp Floyd by the military, charged with stealing a pair of gloves at Camp Floyd; discharged by the court, on the ground that there was no evidence against them. Ordered subpenas for witnesses before the grand jury.

Thursday, March 10.—Attended court and grand jury. Presented three bills of indictment to grand jury against Mose and Looking-glass for rape. Ordered subpenas for witnesses before the grand jury.

Friday, March 11.—Attended court and grand jury. Grand jury returned four bills of indictment—one against David Morgan, charged with buying a soldier's overcoat at Camp Floyd, "ignored;" Morgan discharged. Three bills against Pangunts *alias* Mose, and Nanonits *alias* Looking-glass, Indians, charged with rape and with assault to commit rape, "true bills;" defendants in the military guard-tent. Judge discharged Wilbur I. Earl from the grand jury. Presented bill of indictment to grand jury against John Cazier, charged with enticing a soldier named William McKnee to desert from Camp Floyd. Case of Mose and Looking-glass set for trial on the 14th. S. M. Blair made motion to the court that he, as attorney general of the Territory, appointed by the legislature, be permitted to appear before the grand jury, and prosecute in court all cases arising under the territorial laws. Motion overruled by the court. Ordered subpenas for witnesses before the grand jury.

Saturday, March 12.—Attended court and grand jury. Grand jury engaged in examining witnesses in the case of Henry Forbes, alleged to have been murdered near Springville in March, 1857.

Monday, March 14.—Attended court and grand jury. Grand jury returned a true bill against John Cazier, charged with enticing a soldier to desert. Defendant on bail, not present; ordered a capias for his arrest. Grand jury examining witnesses in the case of Henry Forbes. Sent letter to Colonel Smith at Camp Floyd for witnesses in Cazier's case. Ordered subpenas for witnesses before the grand jury.

Tuesday, March 15.—Attended court and grand jury. Grand jury engaged in examining witnesses in the case of Henry Forbes. The case of Mose and Looking-glass continued, on the application of defendant's counsel, till the 21st.

Wednesday, March 16.—Attended court and grand jury. Grand jury engaged in examining witnesses in the case of Henry Forbes. Grand jury commenced the examination of witnesses in the case of William R. Parrish, W. B. Parrish, and Gardner D. Potter, murdered at Springville on the night of the 15th of March, 1857. Ordered subpenas for witnesses before the grand jury. Wrote letter to Dr. Forney about evidence in Indian murders.

Thursday, March 17.—Attended court and grand jury. Grand jury engaged in examining witnesses in the Parrish and Potter case. Ordered subpenas for witnesses before the grand jury.

Friday, March 18.—Attended court and grand jury. Presented Dr. Forney, superintendent of Indian affairs, to give information to the grand jury about Indian murders. Grand jury engaged in examining witnesses in the Parrish and Potter case. A. F. McDonald, H. H. Kems, and B. K. Bullock arrested by the marshal, on a warrant from the judge, charging them with being engaged in the murder of the Parrishes and Potter.

Saturday, March 19.—Attended court. Grand jury consulting upon the evidence in the Parrish and Potter case. The judge commenced the investigation of the Parrish and Potter case as a committing magistrate. Same case still before the grand jury. Examined witnesses before the judge in court in the Parrish and Potter case. B. K. Bullock discharged.

Monday, March 21.—Attended court. Grand jury called into court and discharged by the judge. Grand jury made no presentment of the business before them. Examined witnesses in the Parrish and Potter case before the judge. Petit jury called in the case of John Cazier charged with enticing a soldier to desert from Camp Floyd. Case tried before the jury, and a verdict of not guilty returned. Defendant discharged. The petit jury discharged by the court.

Tuesday, March 22.—Attended court. Mose and Looking-glass, the two Indians charged with rape, Henry Jenkins, charged with stealing a soldier's over-coat at Camp Floyd, and E. F. Jerrold, charged with shooting a soldier in the knee at Camp Floyd, prisoners in the military guard-tents, brought into court and discharged by the judge. Requested the judge to hold the parties to bail for their appearance at the next court. Request refused. Examined witnesses in the Parrish and Potter case before the judge. Examined Timothy B. Foote before the judge in regard to the massacre of four Danes by Indians in Salt Creek Cañon, Juob county, in June, 1858. Ordered subpenas for other witnesses.

Wednesday, March 23.—Attended court. Examined witnesses in the Parrish and Potter case before the judge. Examined witness before the judge in the case of the murder of Henry Jones and his mother, near Payson, in April, 1858. Ordered subpenas for other witnesses.

Thursday, March 24.—Attended court. Read, in evidence, before the judge, coroner's inquest and record of justice of the peace in the case of the murder of the Parrishes and Potter. Ordered subpenas for witnesses in the case of the murder of Jacob Lance, at Lehi, in the spring of 1857.

Friday, March 25.—Attended court. No witnesses present. Court adjourned till to-morrow.

Saturday, March 26.—Attended court. Examined witnesses before the judge in the case of Jacob Lance. Examined witnesses in the case of the murder of Henry Jones, before the judge. Ordered subpenas for other witnesses.

Monday, March 28.—Attended court. Examination of the Parrish and Potter case continued until to-morrow, on account of the absence of Mrs. Parrish, witness for the prosecution.

Tuesday, March 29.—Attended court. Examination of the Parrish and Potter case resumed. Examined Mrs. Parrish before the judge.

Wednesday, March 30.—Attended court. Examination of the Parrish and Potter case continued till to-morrow, on account of the absence of witnesses for the defense—judge having decided to hear evidence for the defense. Called up the case of Josiah Call and Samuel Brown, killed by Indians near the Sevier river, in October, 1858. No witnesses present; subpena not served. Made statement to the court of all the cases which had come to my knowledge in the district. Requested to know if the court would proceed with the investigation of them. Judge said he would not examine any cases at this place except those in which he had issued warrants. Said it was his intention to examine into these cases at his residence, Camp Floyd, during the summer, or until the chief justice should arrive, who would then have charge of this district.

Thursday, March 31.—Attended court. Judge read affidavit of Joseph Bartholomew, one of the persons arrested on the charge of the murder of the Parrishes and Potter, which he had taken on the 29th of March. Bartholomew further examined by the court, and cross-examined by counsel for defense.

Friday, April 1.—Attended court. Witnesses examined by the defense in the case of Alfred Nethercott, one of the persons arrested in the Parrish and Potter case. Took voluntary statement before the judge of Abram Durfee, one of the persons arrested for the murder of the Parrishes and Potter. Evidence closed on both sides. Commenced summing up the evidence before the judge. Took affidavit of Abram Durfee, before the judge, in the case of Henry Forbes.

Saturday, April 2.—Attended court. Summing up of the evidence in the Parrish and Potter case resumed and concluded. Alfred Nethercott discharged by the judge. Alexander F. McDonald, Hamilton H. Kems, John Daley, Abram Durfee, and Joseph Bartholomew held to answer by the judge for the murder of W. R. Parrish, Wm. B. Parrish, and Gardner D. Potter. Motion by counsel for defense to admit John Daley to bail. Motion refused by the judge. Prisoners committed by the judgees to the custody of the marshal. Court adjourned till 8½ o'clock Monday morning.

Monday, April 4.—Attended court at the time which it was adjourned. Found that John Daley had been admitted by the judge to bail in the sum of $1,000, to appear as a witness on the trial of the other defendants. The prisoners, McDonald, Kems, Durfee, and Bartholomew taken to Camp Floyd with the military, who left Provo this morning for Camp Floyd.

The above is a brief record of the criminal business which was before the court at Provo. I did all in my power to fully investigate all the cases, and bring the offenders to justice. But such was the condition of affairs, owing, as was alleged by the Mormons on the one hand, to the presence of the military, and, as was alleged by the marshal and his deputies on the other hand, to the want of means, the distance,

and the impossibility of finding witnesses, that the evidence for a thorough investigation could not be obtained.

The Mountain Meadows are in this district, in Washington county, three hundred miles south from Provo, and near the boundary line of New Mexico. The great distance, and the time necessary to get witnesses from that remote part of the Territory, and the short sitting of the grand jury, rendered it impossible to bring this case before that body; and to have commenced the examination of a case of so much magnitude and importance, without the evidence to thoroughly investigate and conclude it, would have been prejudicial to a successful issue. In my judgment, the best and the only practicable way of thoroughly and successfully investigating and trying this case, would be for a court to be held as near the scene of the massacre as possible; and for this purpose an ample fund should be provided, such as would be fully sufficient to enable the officers of the court to make a patient and thorough search for evidence, and for the arrest of the guilty parties, and to bear the expenses of witnesses, and all the necessary contingencies which might attend the court, during any length of time that might be required for a complete finishing of the case. That this horrible massacre, through such means and a patient investigation, can be brought to light, and the guilty parties punished, I have a faith as firm as in the eternal justice of Providence.

On the 6th of April I returned from Provo to my residence in Salt Lake City. On the 9th of May I was taken down with an attack of mountain fever, and remained unwell all summer, with various degrees of convalescence and relapse, until a short period before my departure from the Territory, on the 20th of September.

A term of the district court for the third district was commenced in Salt Lake City by Judge Sinclair, on the 25th of July. Although quite unwell, I attended court as long as I was able, until I was compelled to appoint a substitute. I will state the business before this court, and my connection therewith, as heretofore adopted in the form of a diary, as noted at the time.

Monday, July 25.—Attended court. Venire for grand and petit jurors issued by the judge. Court adjourned till to-morrow.

Tuesday, July 26.—Attended court. Court met and adjourned till Thursday.

Thursday, July 28.—Attended court. Grand jury impanneled, and charge delivered by the judge. Grand jury allowed to meet on their own adjournments. Counsel for certain defendants moved to quash the array of grand jurors, on the ground that the territorial law had not been complied with in regard to the time of issuing the venire and summoning the jurors. Motion overruled by the court. Ordered subpenas for witnesses before the grand jury.

Friday, July 29.—Attended court and grand jury. Ordered subpenas for witnesses before the grand jury. Presented bill of indictment to grand jury against Thomas Colburn, colored, charged with shooting Shepherd Hooper, colored, on the 19th of April, 1859.

Saturday, July 30.—Attended court and grand jury. Made application for a writ of *habeas corpus*, in the case of Deloss Gibson, who was tried and convicted for the murder of James Thompson, in the

probate court for Salt Lake county, on the 23d of July, 1859. Filed transcript from the probate court, and argument of the question of jurisdiction set for Tuesday, August 2. Grand jury returned a true bill for murder against Thomas Colburn, colored. Defendant on bail, and not present. Forfeited his recognizance, and issued capias. Grand jury returned a true bill against Theodore Thorp for burglary, in entering the house of Zaccheus Cheney, in Davis county, and stealing about $1,500. Defendant in prison. Court adjourned till August 2.

Tuesday, August 2.—Attended court and grand jury. Habeas corpus case of Deloss Gibson called up. Court decided that the probate courts had no criminal jurisdiction. Arraigned Thomas Colburn, colored, on the indictment for murder. Commenced calling a jury for the trial of the case. Ordered an attachment for Benjamin Perkins, a witness for the prosecution.

Wednesday, August 3.—Attended court and grand jury. Petit jury completed, and the trial of Thomas Colburn commenced; not concluded.

Thursday, August 4.—Attended court and grand jury. Court discharged the jury in the case of Thomas Colburn, in consequence of the absence of Benjamin Perkins, a witness for the prosecution. Defendant remanded to prison. Grand jury returned a true bill of indictment against Deloss Gibson, for the murder of James Thompson, in May, 1859, in Salt Lake City; grand jury returned a true bill of indictment against Ralph Pike, a sergeant in company I, tenth infantry, at Camp Floyd, for an assault with intent to kill on Howard Spencer, on a military reserve in Rush valley, March 22, 1859.

Friday, August 5.—Attended court and grand jury. Called up the case of Deloss Gibson for trial. Prisoner pleaded a misnomer, and made affidavit that his real name was Deloss Melvin Gipson; concluded to send a new bill to the grand jury. Theodore Thorp pleaded guilty to the indictment charging him with burglary. Took statement of Franklin E. McNeill, at the California Hotel. McNeill had been shot with a pistol about 11 o'clock on the night previous—Thursday night. He did not know who had shot him; but believed it was a man named Joseph Rhodes, between whom and himself there had been a difficulty on the night before. Commenced the examination of witnesses before the judge as a committing magistrate in McNeill's case. Had a man named Lot Huntington arrested, whom McNeill thought was in company with the man who had shot him. Informed by the police that Rhodes had escaped in the night, after the shooting.

Saturday, August 6.—Attended court and grand jury. Resumed examination in McNeill's case. Lot Huntington discharged; no evidence implicating him. Ordered subpenas for witnesses before the grand jury in McNeill's case. The grand jury returned a true bill against Langford N. Peele for the murder of O. H. Rooker. Defendant had escaped from the territory before my arrival in Utah. Grand jury returned a true bill against Deloss Melvin Gipson; grand jury returned a bill against William Woodland, charged with larceny; "*inored.*" Theodore Thorp, who pleaded guilty to burglary, called up for sentence. He restored to Mr. Cheney $1,402 05 of the money stolen. Defendant was sentenced to ten years in the penitentiary.

Monday, August 8.—Attended court and grand jury. Grand jury returned a true bill against John McDonald, *alias* Cunningham, for the murder of W. Cook, a policeman, in the spring of 1858. McDonald had escaped from the Territory previous to my arrival in Utah.

Became too ill to attend to business in court, appointed Hosea Stout, Esq., to attend to the business in court for me. Remained at home sick until the 17th. Wrote indictments, and sent them to the grand jury; which were returned by the grand jury to court, as follows:

August 11.—Grand jury returned a true bill against Joseph Rhodes for the murder of Franklin E. McNeill. Same day, grand jury returned a true bill against David McKenzie, as principal, and Myron Bremer, as accessory, for forgery in engraving a plate on which to print treasury checks on the assistant treasurer of the United States at St. Louis, with intent to defraud the government of the United States.

August 16.—Grand jury returned a true bill against Howard Spencer for the murder of Sergeant Ralph Pike on the 11th of August. Same day grand jury returned a true bill against John M. Wallace, charged with keeping a gambling house in Salt Lake City.

August 17.—Grand jury returned true bills against John Wade, and Yodes, an Indian, charged with stealing mules.

Thursday, August 18.—Attended court. Entered *nolle prosequi* in two indictments charging Brigham Young and others with treason, which had been found by the grand jury in the district court in Green River county on the 30th of December, 1857, and on the 5th of April, 1858.

Friday, August 19.—The court adjourned until the 12th of September.

The above is a brief record of the criminal business which was before this court, and my connection therewith, up to the adjournment on the 19th of August to the 12th of September, for the reason, as was stated, to give members of the bar an opportunity of visiting the first district court, which was to commence at Nephi on the 22d of August. During the sitting of the grand jury, I requested them to extend their inquiries into all and every crime or offense of which they had any knowledge or could gain any information in the district.

Finding that I was too unwell to attend the district court for the first judicial district, (formerly the second district,) which was appointed to commence on the 22d of August, in the town of Nephi, about ninety miles south of Salt Lake City, I addressed a communication to Stephen DeWolfe, Esq., requesting him to accept the appointment of deputy United States attorney for that court. On the 19th, I received a reply from Mr. DeWolfe, stating that he would accept the appointment. On the 20th of August, I gave Mr. DeWolfe a written appointment, and, at the same time, wrote a letter to Judge Eckles, carried by Mr. DeWolfe, informing him that I was unable, in consequence of ill health, to attend the court, and of the appointment of Mr. DeWolfe. From a letter sent to me by Mr. DeWolfe from Nephi, dated August 28th, I learned that the following criminal business was before that court: David McKenzie was tried and found guilty on a charge of forgery, engraving a plate on which to print forged checks on the assistant treasurer of the United States, at St. Louis, and was sentenced to two years in the penitentiary. The grand jury found a true bill against John J. Rice, for the murder of a man named Price,

at Camp Floyd, on the 8th of July, 1859. Defendant escaped from the Territory. A true bill against William Bird, for murder in the Parrish and Potter case, (same case which was before the court at Provo;) and a true bill against George W. Hancock as principal, and seven others as accessories, in the murder of Henry Jones, at Payson, in April, 1858, (same case before the court at Provo.) Mr. DeWolfe, in his letter, states: "None of these parties are in custody, and I suppose there is little likelihood of the arrest of any of them. Nothing has yet been done before the grand jury in regard to the Mountain Meadow massacre. I presume none of the witnesses in regard to it are here, and I have called for no subpenas against any of them, regarding it, as you, no doubt, do, as altogether foolish and useless to institute any investigation into the matter, unless it could be gone into fully and thoroughly, and this I believe it is impossible to do at the present term of this court, with all the witnesses so far away, and the difficulty, if not impossibility, of bringing them before the court in any reasonable time."

The grand and petit jurors were discharged by the court on the 29th of August, and the court adjourned on the 4th of September. Subsequently, on the 17th of September, previous to my departure from the Territory, I requested Mr. DeWolfe to continue as my deputy in the first district, but, owing to other engagements, in a note addressed to me on the same day, he declined doing so.

On the 22d of August, I wrote a letter to Judge Cradlebaugh, at Genoa, in Carson Valley, informing him that I would be unable to attend the district court for the second judicial district, appointed to meet in Genoa in September, and requesting him to appoint a proper person to perform the duties appertaining to my office in that court. On the 31st of August, I sent a duplicate of said letter again to the judge, by the hands of the mail-coach drivers.

The district court for the third district resumed its adjourned session, in Salt Lake City, on the 12th of September. I requested the court to recall the grand jury, in order that the cases of murder which had occurred in the city since the adjournment of the court might be fully investigated by that body, and bills of indictment found. Those cases were the shooting of Charles M. Drawn by R. D. Swazy, on the night of the 27th of August, and the wounding of Mr. Arnold, at the same time, of which he subsequently died; and also all other matters which might come to the knowledge of the grand jury. The grand jury was impanneled again on the 14th of September; and I introduced before them Mr. Stout as my deputy, who would prosecute all matters which might be brought before them. On the 15th of September, I tried before the court and jury the case of Thomas Calhoun, colored, charged with the murder of Shepherd Hooper, colored, Mr. Stout having been engaged for the defense when the case was first before the committing magistrate, in April. The jury returned a verdict of guilty of manslaughter, and the defendant sentenced to one year in the penitentiary.

The time appointed for my departure from the Territory, Monday, September 19, being at hand, on the 17th, I gave Hosea Stout, Esq., a written appointment to act as my deputy, and to perform the duties

appertaining to my office of public prosecutor, in said Territory, during my absence, or until my successor should be appointed, having previously determined to resign my office upon my arrival in Washington, on the ground of the total inadequacy of the compensation. On the 17th of September, I addressed letters to Judge Sinclair, in Salt Lake City, and to Judge Eckles, at Camp Floyd, informing them that I was about to start on a visit to the East and Washington city, and that I had appointed Hosea Stout, Esq., my deputy during my absence, or until my successor should be appointed. The same information, with copies of the letters and of the appointment of Mr. Stout, I gave to his excellency Governor Cumming.

The foregoing statements comprise a succinct and faithful report of my official actions, and the business before the courts in which I was officially connected during my sojourn in Utah, from the time I arrived, on the 5th of November, 1858, until my departure, on the 20th of September, 1859.

I will now proceed to answer the charges which the judges have made against me, in their letter addressed to the President, above referred to. And I will answer them in the order in which they appear in that communication. These charges have been made in a spirit of bitter rancor, unparalleled in official correspondence; and I therefore feel that I shall be doing myself only simple justice, if I shall take the liberty, even in this communication of characterizing them, as the truth prompts me, and as they deserve.

Judges say: "In respect to the attorney for the Territory, the Attorney General remarks that he has the fullest confidence in the vigilance, fidelity, and ability of that officer, but if we shall be of opinion that his duty is not performed with sufficient energy, our statement to that effect will receive the prompt attention of the President.

"It affords us no pleasure to make complaints against any officer connected with us in the government service in this distant Territory. We would prefer unity and harmony of action in the discharge of our several trusts. Yet, as the Attorney General invites our opinion as to the efficiency of the district attorney, we have to say that since his advent into this Territory, last November, he has set on foot no criminal prosecution whatever, although abundant evidence is attainable of mayhems, murders, and robberies, sufficient in number and atrocity to mark the history of Utah, for more than two years past, as a record of rapine and blood disgraceful to the age in which we live."

To this wholesale charge, I oppose my unqualified denial. When I arrived in the Territory, I was wholly uninformed of the criminal matters therein, and at the first opportunity I made inquiry in regard to cases to be brought before the court. There were no indictments or criminal cases before the court, which had commenced its session in October, except the binding over by the judge, before my arrival, of two Indians, charged with rape, which case I had removed to the second district, as before stated. The only information I was able to obtain in regard to criminal business to be brought before the court, was from Justice Clinton, the committing magistrate of the city, and from him I received transcripts in cases which had been before him, and bound over to answer at court, charging various persons with

robbery, horse stealing, and larceny, whose names are mentioned in my journal of court proceedings, as territorial cases. I immediately prepared indictments on these transcripts, and had them ready to go before the grand jury. My right to prosecute crimes and offenses at all against the laws of the Territory was opposed by the territorial attorney, appointed for that purpose by the legislature, and this question of jurisdiction, which was argued before the court, as before stated, was not decided until the 22d of December. I received no evidence of any cases of mayhem or murders in that district. There were rumors among those hostile to the Mormon people and the leaders of the church of mayhems and murders having been committted or caused to be committed by the church authorities, but I was unable to obtain any evidence concerning them whatever, and the grand jury, whom I requested to inquire into all these matters, gave me no information concerning the same, nor made any charges or presentments. I will state the cases which did occur after my arrival in the Territory, and my official connection therewith in the prosecution of the same.

The first case was the killing of a deaf and dumb boy in the mountains adjacent to Salt Lake City, in December, 1858, by a policeman, named N. L. Christianson. The question of jurisdiction between the territorial attorney and myself not being decided yet, I appeared before the judge, as a committing magistrate, at his request, as prosecutor in this case. I examined testimony before the judge in this case, from the 15th to the 22d of December, when the defendant was bound over to answer on a charge of murder. The grand jury, as before stated, "ignored" the bill of indictment, on the 4th of January, 1859, and the defendant was discharged.

The next case which occurred was that of Thomas Colburn, a colored boy, shooting another colored boy, named Shepherd Hooper, on the evening of the 19th of April, in Salt Lake City. Defendant was arrested by the police, and I appeared before Justice Clinton, committing magistrate, as prosecutor, and the defendant was bound over, on a charge of manslaughter, and admitted to bail in $1,000. This case was tried before the court, on the 15th of September, and the defendant found guilty of manslaughter, and sentenced to one year in the penitentiary, as before stated.

The next case which occurred was that of Deloss Gibson, shooting James Thompson, in Salt Lake City, in May, 1859. The defendant was arrested by the police. When the case occurred I was unwell, and requested the captain of police to inform me if the committing magistrate, Mr. Clinton, desired my services at the preliminary hearing. I received no information that my services were required, and the defendant was committed to answer by the magistrate. This case, subsequently, on the 15th of June, I saw in the newspaper was before the probate court, and that a grand jury in that court had found a true bill for murder against Gibson. Being too ill to leave my room, I immediately wrote a note to the probate judge, suggesting the exclusive jurisdiction of the district court in the case, and requesting an opportunity to argue the case, inasmuch as criminal jurisdiction had been given to that court by the legislature. At the time appointed for the argument, being too ill to argue, I submitted a brief of my

points and authorities to the counsel on the other side and the probate judge. The case, however, notwithstanding my remonstrance, and without my knowledge, being still confined to my room, was, on the 23d of July, tried before the probate court, and the defendant found guilty of murder, the county attorney of the territory, appointed by the legislature, appearing as prosecutor. Subsequently, on the 30th of July, I had the case removed, by a writ of *habeas corpus*, to the district court, where the grand jury found a true bill for murder, as before stated. I tried to get the case up for trial before I left the Territory, but it was continued on account of the absence of witnesses for the defense. I have referred to this probate court matter because it was a question of difference of opinion between the territorial and federal officers.

The next case which occurred was the murder of Franklin E. McNeill, who was shot on the night of the 4th of August, in Salt Lake City. Early in the morning I saw the police magistrate, Mr. Clinton, who informed me of the affair. He said it was believed that a man named Joseph Rhodes had shot McNeill. I requested the magistrate to issue a warrant for Rhodes. He informed me that the police had been making diligent search for Rhodes, and that he had escaped during the night. The same morning, August 5, during a recess of the court, I took the dying statement of McNeill, at the California House. McNeill did not know who had shot him. It was about 11 o'clock at night; he had come from his room down to the outside of the hotel, to make water, and while there two men came up, one of whom said, "Frank, is that you?" and the other man shot him with a pistol. The man ran. McNeill fired his pistol at him, but did not hit him, and he made his escape. He supposed it was Joseph Rhodes who had shot him. There had been a difficulty between Rhodes and himself on the night before, in the bar-room of the hotel, and Rhodes had then fired a pistol at him, the wadding of which had burned his hat. He thought the man who had spoken to him was a man named Lot Huntington. During the same day, I had a warrant issued for Huntington, and commenced the examination of witnesses in the case before the judge, as a committing magistrate, but there being no evidence to implicate Huntington, and McNeill having stated before he died that he was mistaken about Huntington, he was discharged. I then put the case before the grand jury, and they found a true bill of indictment against Joseph Rhodes, as before stated.

The next case of murder which occurred was that of Sergeant Ralph Pike, who was shot by Howard Spencer, on the 11th of August, in Salt Lake City. At the time this occurred I was too ill to leave my chamber, and Mr. Stout was acting as my deputy. Spencer, after the shooting, made his escape. Pike had been brought from Camp Floyd, to answer on an indictment found against him by the grand jury for an assault with intent to kill on Spencer, on the 22d of March, 1859. The grand jury, on the 16th of August, returned a true bill against Howard Spencer, for the murder of Ralph Pike, as before stated.

The next case which occurred was the murder of Chas. M. Drown, who was shot on the 27th of August, Saturday night, by a man named R. D. Swazy, and the shooting, at the same time, of Mr.

Arnold, who subsequently died from the wound. When this case occurred, I was still unwell; but on Monday, August 29, I went to the judge, who had taken the dying statement of Drown, and requested a warrant to be issued, which I immediately inclosed to the marshal, for the arrest of Swazy. On the next day, being too unwell to attend to business, I requested Mr. Stout to attend to this case for me.

The next case of murder which occurred was the shooting of a man named Carpenter by Thomas H. Ferguson, on the 17th of September. Ferguson was immediately arrested. This case occurred on the eve of the time appointed for my departure for the States, and Mr. Stout, my deputy, took the case immediately before the grand jury.

Under the territorial statutes, the justices of the peace have criminal jurisdiction of offenses where the fine is not over $100 and the imprisonment not over six months; and the parties accused have the right to call a jury. Shortly after my arrival in Salt Lake City, I requested Justice Clinton, who acted as the committing magistrate, to inform me at any time when he desired my services before him as prosecutor, either in cases in which he acted as committing magistrate to bind over to court, or where he heard and determined finally. He deemed it necessary to request my services in but three cases, viz: the case of McCormick and Vernon, charged with manufacturing liquor without license, in which I appeared on the 4th and 5th of January, and the defendants were bound over to answer at court; and on the 6th of January the grand jury ignored the bill of indictment, as before stated. The next was the case of John M. Wallace, charged with keeping a gambling-house, in which I appeared on the 14th and 15th of January. The defendant demanded a jury, and he was convicted and fined $99.99. The next was the case of Thomas Colburn, colored, charged with shooting Shepherd Hooper, colored, who was bound over for manslaughter, and found guilty in court, as before stated.

The above statements, together with the proceedings before the courts before referred to, comprise a brief and correct account of my official acts as prosecutor, in Salt Lake City, for the third district. If these judges knew of "mayhems, murders, and robberies," in which "abundant evidence is attainable," they never furnished me with any evidence, or gave me any information on the subject whatever.

The judges say: "Previous to the session of the court at Provo he did not set his foot in the district, except on one occasion, when he visited Camp Floyd on his own private business."

From my arrival in Salt Lake City until the adjournment of the district court on the 18th of January, I was in attendance upon that court. On the 27th of December, during an adjournment of the court, I visited Camp Floyd to see the place, and returned on the 29th to my residence in Salt Lake City, the court meeting again on the Monday following, January 3. On the day of the adjournment of the court in Salt Lake City, January 18, I wrote a letter to the judge at Camp Floyd, informing him of the adjournment of the court for the third district, and that I would attend the court for the second district, as

before stated. The interval between the adjournment of the court in Salt Lake City, January 18th, and the commencement of the court at Provo, March 8th, embraced the severity of winter in Utah; and on the 7th of March, when I went to Provo, the roads were barely passable. I did not consider Camp Floyd, a military post, a proper place for the exercise of my civil functions, and the commencement of the court at Provo was the first opportunity I had of getting witnesses and commencing prosecutions in the second district. The investigations before the grand jury and the court at Provo I have stated above in my journal of court proceedings. During the session of the grand jury and the sitting of the court I endeavored to investigate and prosecute all the cases which came to my knowledge, ordering subpenas for witnesses whenever, either before the grand jury or the court, persons were mentioned by the witnesses as being likely to know anything about the cases under examination. But the session of the grand jury and the sitting of the court were too short to make a complete examination of all the cases. Had the grand jury been permitted to remain longer in session, and had the court remained in session until the business was finished, I might have been enabled to have brought the guilty parties, or some of them, to justice. But the opposition of the people to the military at the court-house, in a quiet village, in a time of peace, rendered it impossible to get witnesses, the Mormon people saying that the really guilty parties were not so much wanted as a chance to get at the church authorities, and bring about a collision in the Territory.

The judges say: "In civil cases, arising out of the invasion of private rights of persons and property, coupled with crimes committed by the Mormons during the time of their rebellion, he appears as their counsel to vindicate their conduct."

There were three civil cases which had been brought to the October term of the court in Salt Lake City, in which Hosea Stout, Esq., attorney for the defendants, requested me to assist him in preparing the pleadings for the defense. The cases were W. F. McGraw *vs.* Feremorz Little, a civil action on a promissory note for some $700, with interest; Stiles & Williams *vs.* the Mayor and Corporation of Salt Lake City, a civil action to recover the value of certain books of plaintiffs, alleged to have been destroyed by a mob; and Franklin E. McNeill *vs.* Brigham Young and others, a civil action to recover damages for an alleged false imprisonment of plaintiff. The court adjourned without the trial of any civil cases, and nothing whatever was done with any of the above cases, nor were any of them mentioned in court, except the case of McGraw *vs.* Little, in which a motion was made for judgment on the copy of note filed, and which was not granted. Subsequently, as I was informed, the case of Stiles & Williams *vs.* the Mayor and Corporation of Salt Lake City was settled by agreement of the parties and attorneys, of which I had no knowledge, and in which I had nothing to do whatever. In the case of McNeill *vs.* Young and others, after the commencement of the court in Salt Lake City, on the 25th of July, I assisted Mr. Stout, attorney for the defendants, to prepare an answer to the complaint filed, and that was all I had to do with the case whatever. With the case of McGraw *vs.* Little I had nothing to do at all.

These cases were all purely civil actions of a private character, to recover money by the plaintiffs, and not in the most remote degree whatever connected with my official duties.

The judges say: "At the last term for the third judicial district, he placed the private papers of the judge into the hands of a Mormon, who was afterwards indicted at the same term for a criminal offense, and acquitted by a Mormon jury against all law and evidence. These papers (containing the private and uncorrected charge of the judge to the grand jury) were published the morning after they were placed in his hands in the 'Deseret News,' a paper which exerts all its power to bring into contempt the federal courts."

On the 22d of November, 1858, the judge read a written charge to the grand jury. After the charge was read, the grand jury was adjourned till the next day. The next day, after the opening of the court and the calling of the grand jury, I asked the judge publicly for a copy of his charge to the grand jury. The judge said he had no copy, and that the charge was in the hands of a printer in the city for publication. On the next day, December 24th, the publication of the charge not yet appearing, and being desirous of reading it, in order to examine the question of treason therein discussed, the judge gave me the written charge, which I took to my dwelling to peruse. In the evening, after I had finished reading the charge, Mr. Staines, the man with whom I boarded, came to my room, where I was engaged in writing, and introduced to me James Ferguson, Esq., a lawyer of Salt Lake City. Mr. Ferguson requested permission to read the charge to the grand jury. Knowing no reason to the contrary, and supposing that he, a member of the same bar, had the same right to read a charge which had been publicly read to the grand jury in open court, I handed him the charge to read, requesting that it should not be taken out of the house, and should be returned to me when he was done, as I wished to return it in the morning. He went into another room with the charge, and, in about two hours, it was returned to me in my room, having, without my knowledge, been copied for publication, and the next morning it appeared in the "Deseret News." It was the result of newspaper rivalry for a first publication, in which I had no concern at all, and about which I had no knowledge whatever.

Judges say: "He congratulated this offender, at the close of the trial, by offering him his hand. His prosecution was marked with neither vigilance nor ability."

On the 15th of December, 1858, James Ferguson was indicted by the grand jury on a charge of having used threatening language to intimidate Judge George P. Styles in the discharge of his duty, at the February term of the court, in Salt Lake City, 1857, and he was, as I have before stated in my journal of court proceedings, tried and acquitted. He was tried according to law, and acquitted by the jury on the evidence, of which it was their province to judge. There were three persons on the jury who were not Mormons. I labored from the 15th of December to the 7th of January to get the case before a jury, and the case was three days on trial before the jury; and I exerted all my vigilance and ability, under the evidence, to secure a conviction.

After the defendant had been acquitted, and discharged by the court, he came to me and thanked me for the fair and upright manner in which I had conducted the prosecution throughout, and, in doing so, he may have extended his hand, as it is a fashion in that country. I did not congratulate the defendant on his acquittal, and I have no recollection of offering my hand, and if any person saw, or imagined they saw it done, they must have been watching closely in a crowded court-room, with a design as contemptible as the charge here itself. If it is meant by any of these charges to be understood, inferred, or insinuated that I had any collusion or improper intercourse whatever, in any manner, or about anything, with James Ferguson, or any other person or persons whomsoever, I pronounce it an unqualified falsehood.

The judges say: "His whole course of conduct has been marked by culpable timidity and neglect, and his relations with the Mormons have been so objectionably manifested by his acts, that he has lost our confidence in his willingness and ability to discharge properly and firmly the duties of a public prosecutor in this Territory. Indeed the Christians and apostates from the Church, whom the Mormons here opprobiously call Gentiles, will not trust their complaints to his keeping, and seek out the judges to institute preliminary proceedings without his aid."

"His whole course of conduct has been marked by culpable timidity and neglect." I never at any moment, in Utah, saw occasion to have the slightest fear, nor felt any. I attended to all the duties of my office properly and promptly. This vague charge I pronounce an unqualified falsehood.

My "relations with the Mormons" were those only which a man living in their midst, and conducting himself as a gentleman, was obliged to have. I boarded from necessity, as well as choice, with a Mormon family, where I was always kindly, and during my illness, affectionately treated. The Mormon people with whom I came in contact treated me with respect, and I, in return, treated them in the same manner—nothing more. My relations, both personal and official, with the Mormons were at no time, nor under any circumstances, manifested by any acts, motives, or feelings, otherwise than perfectly proper; and any charge or insinuation to the contrary I pronounce an unqualified falsehood.

If the judges chose to withdraw their confidence in my willingness and ability to discharge properly and firmly the duties of my office, it was their own voluntary act and desire, and brought about by no acts of mine. And if it is meant to charge or insinuate that I was unwilling and unable to discharge properly and firmly the duties of my office of public prosecutor, I pronounce it an unqualified falsehood.

I have no knowledge of any persons who were not willing to trust their complaints to my keeping, nor do I believe there were any, except, perhaps, some gamblers at Camp Floyd. I was informed of no preliminary proceedings before the judge in Salt Lake City, of this character, and, if there were any such, I was furnished with no evidence concerning the same.

Whatever complaints may have been made, or preliminary proceed-

ings instituted before the judge at Camp Floyd, I was not informed of by him, nor was I furnished with any evidence concerning the same.

There was one case in the early part of July, in which the preliminary proceedings were instituted at Camp Floyd, without any information being given to me, and the defendant, David McKenzie, was taken on a warrant from Salt Lake City—where his offense, forgery, (engraving a plate on which to print blank checks on the assistant treasurer of the United States at St. Louis,) was committed, in the third district—to Camp Floyd, in the first district. This defendant was subsequently tried and convicted at the court at Nephi, as before stated.

The judges say: "Two criminal cases only—one in each district—have gone to juries since the opening of the courts here. The crimes charged were offenses against the United States. Both prisoners were acquitted, and in each case the attorney prepared the indictments and prosecuted in court."

The only case which went to a jury at the October term in Salt Lake City was that of James Ferguson, before mentioned. This was the only case which went to a jury in that court because the judge discharged the jury without giving me an opportunity to try the territorial cases which I requested and was desirous of trying.

There was only one case went to the jury in the court at Provo, that of John Cazier, before mentioned, because the judge discharged the jury immediately after that trial, and thus prevented me from trying other cases in which there were two bills before the court. He discharged the grand jury while they were consulting on business which I had laid before them, and thus prevented me from getting other indictments before the court.

The judges say: "Numerous warrants have been issued for the apprehension of criminals upon affidavits made by persons who have voluntarily presented themselves to institute prosecutions, all of which remain unexecuted. The judge in these cases acted as committing magistrate—a duty enjoined on him by the peculiar condition of affairs."

If the warrants here spoken of were issued by the judge at Camp Floyd, or anywhere else in the second district other than in cases in which I examined witnesses before him at the court at Provo, he never gave or sent me any information concerning the same. In the month of May the judge went from Camp Floyd in company with a detachment of troops, who went, as the newspaper stated, to Santa Clara to escort Major Prince on his way from California with money for the army at Camp Floyd. During this journey it was said the judge issued warrants against a number of persons charged with being engaged in the Mountain Meadow massacre, but of which he never gave or sent me any information on the subject whatever.

Being anxious to get evidence in the Mountain Meadow case, on the 5th of August, I wrote a letter to Mr. Wm. H. Rodgers, a gentleman then in Salt Lake City, who had a knowledge of that part of the Territory, and in whom I placed reliance as a proper and discreet person, requesting him to go into that country to collect evidence and subpena witnesses. The following is a copy of said letter:

"GREAT SALT LAKE CITY,
"*August* 5, 1859.

"SIR: Desiring assistance to collect evidence and summon witnesses in the case of the Mountain Meadow massacre, which will be before the district court for the first judicial district, at the next session thereof, and believing you to be a desirable person to employ in that trust, I shall, if you will accept, appoint you my agent for the purposes above mentioned, in accordance with the suggestion of the Attorney General of the United States, in his letter to me of the date of May 17, 1859. Please let me know at your earliest convenience whether or not you will engage in said service.

"I am, respectfully, your obedient servant,

"ALEXANDER WILSON.
"*Attorney of United States for the Territory of Utah.*

"WM. H. RODGERS, Esq."

I received, in reply to this communication, a letter of which the following is a copy:

"GREAT SALT LAKE CITY,
"*August* 8, 1859.

"SIR: In reply to yours of the 5th instant, proposing to me to act as agent in the collection of evidence and summoning witnesses in the case of the Mountain Meadow massacre, I have to say, that no reasonable expectation of success can be entertained, unless a strong force, well equipped and furnished, shall accompany, and be subject to the orders of the person undertaking the business. The outfit and expenses of such a force would involve a greater outlay of money than I have at command. It seems to me that the government ought to provide a fund for the purpose. From my knowledge of the circumstances of the massacre, and of the people living in the neighborhood, I [am] persuaded that without such a force no satisfactory search can be made. I would cheerfully undertake the business under auspices promising success.

"Very respectfully, &c.,

"WM. H. RODGERS.

"General A. WILSON.".

On the 6th of August, I suggested to the United States Marshal to appoint John Kay, the territorial marshal, his deputy to go into the southern part of the Territory, and endeavor to make arrests in the Mountain Meadow massacre. Kay was a Mormon, had a knowledge of the country and of the people, and expressed a determination, if legally deputized, to make arrests if possible. The marshal declined to appoint Kay his deputy, on the ground that he was a Morman.

Having received no information of what had been done, either by the judge or the marshal, on the 18th of August I wrote a letter to the marshal, of which the following is a copy:

"GREAT SALT LAKE CITY,
"*August* 18, 1859.

"SIR: Will you please inform me of the names of the persons for whom a warrant or warrants of arrests were issued by Judge Cradlebaugh in the matter of the Mountain Meadow massacre, and when said warrants were put into your hands. And also please inform me whether you have made any arrests on said warrants, and if not, state whether you can make said arrests, and have the parties named in said warrants before the district court for the first judicial district, appointed to commence at Nephi on Monday next, 22d instant.

"Very truly yours, &c.,

ALEXANDER WILSON,
"*Attorney of United States for the Territory of Utah.*

"PETER K. DOTSON, Esq.,
"*United States Marshal, Utah Territory.*"

I received no reply to this letter, or answer of any kind whatever. What occurred at the court at Nephi, which is some 260 miles distant from the Mountain Meadow, in regard to this case, has been stated by Mr. De Wolfe, who acted as my deputy at that court, in the extract from his letter to me, as before stated. And in the views expressed therein by Mr. De Wolfe, I fully concurred. And I have previously herein stated my own judgment in regard to what I believe to be the only practicable way of thoroughly and successfully investigating and trying this horrible case.

The judges say: "Indeed, so far have matters proceeded that propositions have actually been made through the governor to the judges for a surrender by the Church of the fugitives, upon *condition* that the judges shall have a certain understanding with them as to the constitution of their juries. Of course, all such approaches are indignantly spurned."

Firmly believing that Governor Cumming never made, or could make, such propositions as are herein imputed to him, I pronounce it an unqualified falsehood.

The judges say: "Moreover, long anterior to the sitting of the court (at Provo) the judge had issued warrants to the marshal for the apprehension of a number of persons against whom affidavits had been made charging various murders, and the marshal made oath before the judge that he could not execute the warrants without military aid."

The marshal lived in Salt Lake City. I lived in Salt Lake City, and there was almost daily communication with Camp Floyd in December, but no notice or information was ever given to me at any time of the necessity of military aid in making arrests.

On the 20th of June, 1859, I received a letter from the United States marshal in regard to the prisoners at Camp Floyd, who were committed

by the judge at the court at Provo in the Parrish and Potter case, and taken to Camp Floyd, in which it was stated that the officer in command at Camp Floyd desired the prisoners to be removed from the camp; the letter also stating certain points about the want of means and jails provided by the Territory for keeping prisoners, and asking my opinion concerning his duty in the premises. The original of this letter, I believe, I handed at the time to Governor Cumming, and I have no copy with me, but the substance is as above stated. I had never been consulted by the marshal before. On the next day, June 21, I answered this letter, a copy of which is herewith submitted.

What the marshal did in the matter I was never officially informed. It was rumored that the prisoners, or some of them, were delivered at Camp Floyd to a deputy sheriff of Utah county, who took them to Provo; and I was subsequently informed by the marshal, while I was confined to my chamber, that the prisoners, or some of them, were at large in or about Provo. I requested a copy of the judge's commitment of the prisoners to the marshal; and finding that they had, by this writ, a copy of which is herewith submitted, been fully committed to his custody, safely to keep and have them before the district court at the next session thereof, I deemed it proper, as it was my duty, to have no interference with the duties of the marshal whatever.

None of these prisoners were before the next session of the district court at Nephi, as I was informed by Mr. De Wolfe, in his letter to me above referred to.

There was a man named Thomas Joy tried and convicted for murder before the probate court in San Pete county, in the southern part of the Territory, in the month of June. Believing that the probate court had no jurisdiction in the case, and being too ill to write at the time the information came to Salt Lake City, Thomas Adams, Esq., made application by petition for a writ of *habeas corpus* to the chief justice, and Joy was brought before him, and remanded for trial at the next district court for the first district, the judge deciding that the probate court had no jurisdiction in the case. This prisoner, as I was informed, was not before the district court at Nephi, having, as was said, made his escape from the sheriff of San Pete county.

I heard that it had been charged that the Mormons had trespassed upon the public lands of the United States in Utah, in cutting and using timber in the mountain cañons. I made inquiry into this subject, and I found that the charge of trespass had no foundation whatever. The Mormon people are located in the valleys eligible for tillage and irrigation, and which they are rapidly improving in farms, buildings, and towns. There is no timber in the valleys. The timber is only found in the cañons on the mountain sides. In these cañons there are saw-mills, and timber is cut and sawed for building purposes and other necessary wants, and mechanical works called for by the necessities and labor of the people. The wood that is hauled from the mountains for firewood, and the timber that is cut and sawed for buildings, and other mechanical purposes, are as necessary to the wants of the people as the occupation and tillage of the soil which gives them bread, the grass which keeps their cattle, and the sunlight and mountain streams which produce their harvests.

I believe I have now given a full statement of all my official acts in Utah, in as brief a form as I could, of the crimes which were brought to my knowledge, and the proceedings before the courts until my departure.

I have answered the charges of these judges. The court was in session in Salt Lake City when I left, and Mr. Stout, my deputy, I instructed to bring before the court and grand jury all matters which might remain or transpire for investigation.

I was compelled to leave when I did, otherwise the weather would have kept me in the Territory another winter, and that, I was informed by her physicians, might have proved fatal to my wife, who had willingly endured the fatigue of a long journey to be the constant companion of my solitary home in Utah.

I went to the Territory with the determination to perform the duties of my office faithfully, impartially, and to the best of my ability. I determined to serve nor listen to no clique or faction, to keep aloof from all personal embroilments. I was a civil law officer of the government, sent to a remote and isolated part of the country. With the religion of the Mormons I had nothing to do whatever; the law gave me no right of interference. I felt that it was my duty to look upon the inhabitants as American citizens, and under the protection and government of the laws of the United States. The rule of action I adopted and carried out, was, how would I perform the duties of a similar office at home or anywhere else, and this principle of action carried me, as it will carry any man, safely through.

I am, very respectfully, your obedient servant,

ALEXANDER WILSON,
United States Attorney for Utah Territory.

Hon. J. S. BLACK,
Attorney General of the United States.

UNITED STATES ATTORNEY'S OFFICE,
Great Salt Lake City, U. T., January 18, 1859.

SIR: The United States district court for the third judicial district, holden in this city, was this day adjourned by his honor Judge Sinclair, for the October term, 1858.

Permit me, very respectfully to inform you that I will appear before your honor's court in my official capacity as United States attorney for the Territory of Utah, as soon as your honor will be kind enough to indicate, by letter or otherwise, the time and place of holding the United States district court for the second judicial district, over which your honor presides.

I am, very respectfully, your obedient servant,

ALEXANDER WILSON,
United States Attorney for Utah Territory.

Hon. Judge CRADLEBAUGH.

Opinion in regard to compensation for members of the legislative assembly in Utah, written at the request of Mr. Hartnett, secretary for Utah.

JANUARY 25, 1859.

The organic act, section 11, provides, that "The members of the legislative assembly shall be entitled to receive $3 each per day during their attendance at the sessions thereof, and $3 each for twenty miles travel in going to and returning from the said sessions, estimated according to the nearest usually traveled route."

The comptroller, in his letter of August 21, 1857, says: "That the officers and attendants (enumerating them therein) will be paid at the rate of $3 per diem (and no mileage) from date of election to end of session, and none others. If temporary officers and attendants shall be elected at the commencement of the session, whose places shall be supplied by permanent officers, you will be careful not to let the per diem lap.

"The presiding officers of the council and house will each be entitled to receive $3 per day as extra per diem or compensation, in addition to the regular per diem."

In regard, therefore, to the time for which officers and attendants shall be paid, the language of the comptroller's letter is explicit and conclusive, the words being, "from the date of the election to the end of the session."

Temporary officers and attendants will be paid from the time of their election until their places shall have been supplied by the election of permanent officers and attendants. The pay of the permanent officers and attendants commencing from the time of their election and extending to the end of the session.

In regard to the time for which members of the legislative assembly shall be paid, section 4 of the organic act provides "that no one session shall exceed the term of forty days."

The comptroller's letter, before referred to, says: "The session of the assembly in Utah will continue, by virtue of the fourth section of the organic act, forty days inclusive."

The session of the assembly is, therefore, extended to and limited to forty days.

The members elect and duly qualified constitute the legislative assembly. Their term of office, according to the fourth section of the organic act, being for members of the council two years, and for members of the house one year. Their term of service in the session commences by law on the first day of the session, the second Monday in December, (in this case the 13th,) and extends to the end of the session, "forty days, inclusive."

Those members who were present at the commencement of this session, to wit, 13th of December, and were qualified, will be entitled to their per diem from that day. Those members who presented their credentials, and were qualified at any subsequent day, will be entitled to their per diem from that time, and not from the commencement of the session. In both cases, the per diem will continue to the end of the session.

The same rule being applied to members of the legislative assembly which the comptroller has applied to officers and attendants, who "will be paid from date of election to end of session," and the member will be paid from date of their qualification to end of session.

When a member has been duly qualified he remains in point of fact, unless he resign or be expelled, a member until the end of the session, and in legal presumption he is presumed to be present in the exercise of his official functions. He also has a vested right to the enjoyment of his office, and in the privileges and emoluments arising therefrom.

The legislative assembly has full power over its members within the line of their duty, and in regard to its own adjournments, which adjournments from time to time during the session are included in the forty days. Each house regulates its own proceedings, and is the judge of the services of its own members, officers, and attendants.

The duplicate certificate of the presiding officer and proper clerks of each house for the attendance of each member is the proper voucher and warrant for paying the same. The specified days' attendance being from the day when the member presented his credentials and was duly qualified, until the end of the session, the same being not more than forty days.

In regard to the place of meeting of the legislative assembly, the resolution of the legislature of January 19, 1855, says, that "the sessions shall commence annually on the second Monday of December, at 10 o'clock, a. m., in the Territorial house at Fillmore City, until altered by legislative enactment."

The comptroller, in his letter above referred to, says: "The sessions should be held at the seat of government, in the capital buildings."

The governor, in his proclamation published in the Deseret News of——, 1858, called upon the legislative assembly to meet at Fillmore, the seat of government, on the 13th of December, which they did—or at least a quorum met there, and after organizing, for reasons of a temporary nature in regard to accommodations, which appeared satisfactory and proper to Governor Cumming, the legislative assembly were allowed to adjourn from Fillmore to complete their session at Great Salt Lake City. The adjournment time occupied in removing to this city was a necessary consequence of this action, and the per diem of the members, officers, and attendants who met at Fillmore and removed to the city continued to inure to them, in virtue of their several offices.

The comptroller, in his letter, also says: "It is to be presumed many questions may arise which cannot be foreseen, and which cannot by consequence be met and disclosed in a letter of general instructions." The temporary removal of the legislative assembly from Fillmore to Great Salt Lake City is a contingency which may be embraced within the purview of the above paragraph. At all events, Governor Cumming has sanctioned said removal.

I am, very respectfully, your obedient servant,

ALEXANDER WILSON,
U. S. Attorney for Utah.

Hon. JOHN HARTNETT,
Secretary of State for Utah.

HEADQUARTERS CAMP FLOYD, U. T., *February* 23, 1859.

SIR: I will thank you at your earliest convenience to let me know [who] among the civil officers of the Territory of Utah are entitled to grant writs of *habeas corpus*.

Is a probate judge entitled to issue such a writ, or to hold a court for the trial of civil or criminal offenses?

Very respectfully, your obedient servant,

C. F. SMITH,
Brevet Colonel U. S. Army commanding.

HON. JNO. CRADLEBAUGH,
U. S. District Judge Territory of Utah.

CAMP FLOYD, U. S.,
February 28, 1859.

SIR: Colonel Smith has addressed me a letter, which I inclose to you. The question therein made may be adjudicated before me, and it would perhaps be improper for me to give an opinion.

Will you please advise him on the subject, and very much oblige, respectfully yours,

JNO. CRADLEBAUGH.

General WILSON,
U. S. Attorney for Utah Territory.

GREAT SALT LAKE CITY, UTAH TERRITORY,
March 4, 1859.

SIR: I received yesterday a letter from Judge Cradlebaugh, inclosing your communication to him of the 23d ultimo, with the request that I would answer the same, inasmuch as the questions therein stated might be brought before his court for adjudication, and in that event it would perhaps be improper for him to give an opinion.

I am quite willing to give my general opinions on the questions propounded, but I do not presume that they shall influence other men's judgments.

The questions are as follows:

"Who among the civil officers of the Territory of Utah are entitled to grant writs of *habeas corpus?*

"Is a probate judge entitled to issue such a writ, or to hold a court for the trial of civil or criminal offenses?"

A writ of *habeas corpus* has been defined to be an order in writing, signed by a judge who grants the same, and sealed with the seal of the court of which he is a judge, issued in the name of the sovereignty where it is granted by such a court, or a judge thereof, *having lawful* authority to issue the same. The statute of Ch. II, c. 2, called the *habeas corpus* act, provides that the person desiring the writ "may

apply by any one in his behalf, in vacation, to a judicial officer," and in term time "may obtain his writ of *habeas corpus* by applying to the proper court."

This statute has been substantially incorporated into the jurisprudence of every State in the Union, and it forms the basis of construction and practice in the courts of the United States as well as of the State courts.

The Constitution of the United States, and the acts of Congress touching the writ of *habeas corpus*, and pertinent to the present inquiry, provide as follows:

The ninth section of the Constitution of the United States, says: "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Of this necessity it is said, Congress, in its legislative capacity only, shall be the judge.

The fourteenth section of the act of September 24, 1789, (1 Stat. at Large, 81,) says: "All the beforementioned courts of the United States shall have the power to grant writs of *habeas corpus*, for the purpose of inquiring into the cause of commitment."

The first section of the act of August 29, 1842, extends the above power to any foreigners who may be confined by the United States or any State, and who may declare that they acted under authority from a foreign State.

The act relating to imports and exports, March 2, 1832, section seven, says: "Either of the justices of the Supreme Court, or a judge of any district court of the United States, in addition to the authority already conferred by law, shall have power to grant writs of *habeas corpus* in all cases of any prisoner or prisoners in jail or confinement, where he or they shall be committed on or by any authority or law, for any act done, or omitted to be done, in pursuance of a law of the United States, or any order, process, or decree of any judge or court thereof, anything in any act of Congress to the contrary notwithstanding."

The judicial power of the courts in the Territory of Utah is defined in the 9th section of the act of Congress entitled "An act to establish a territorial government for Utah," approved September 9, 1850. (Stat. at Large, 453.)

In this section the following language, applicable to this inquiry, occurs: "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 jurisdiction of the several courts herein provided for shall be as limited by law."

"And the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction."

"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 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."

It will be noticed in the above extracts from the ninth section that the writ of *habeas corpus* and the power to issue the same, are mentioned in connection with the supreme and districts courts only, and the judges thereof.

This act which is called the organic act, and which is tantamount to a territorial constitution, must be construed by its own language, and full effect must be given to the express terms thereof. The several courts are created by this act, and their jurisdiction "shall be as limited by law." By what law? Surely by the law which created them, as expressed.

The power of issuing writs of *habeas corpus* is therein expressly given to the "supreme and district courts of the Territory, and the respective judges thereof." This power, therefore, is not only not given to the probate courts, but, by the limitation to the courts named, the probate courts are excluded by the act from exercising the power.

Congress having the power to establish inferior courts, must, as a necessary consequence, have the right to define their respective jurisdiction.

Sheldon *vs.* Sill, 8 Howard, 448. When a court is created, and its operations confined to certain specific objects, it could not assume a more extended power of jurisdiction.—(1 Kent, 334.)

But the legislative assembly of Utah has given the probate courts, or the judges thereof, power to issue writs of *habeas corpus*. Section three of an act entitled "An act in relation to writs of *habeas corpus*," approved February 2, 1852, (Utah Laws, Edition of 1855,) provides as follows: "The writ of *habeas corpus* may be allowed by the supreme, district, or probate courts, or any judge thereof, and may be served in any part of the Territory."

Had the territorial legislature the right to give this power to the probate courts, or the judges thereof? If it had, then the power may be rightfully exercised.

In the case of Bollman and Swartwout, (4 Cranch, 75,) Chief Justice Marshall, in delivering the judgment of the court, said: "For the meaning of the term *habeas corpus*, resort may unquestionably be had to the common law, but the power to award the writ by any of the courts of the United States must be given by written law."

It has been shown that this power has been given by the organic act to the supreme and district courts only.

In the case of Lockington, (5 Hall's L. I., 92, 313,) it was held by the supreme court of Pennsylvania, "That the authority of the State judges in case of *habeas corpus* emanates from the States, and not from the United States. In order to destroy their jurisdiction, therefore, it was said, it was necessary to show, not that the United States had not given them jurisdiction, but that Congress possessed, and had executed, the power of taking away that jurisdiction which the States have vested in their own judges."

The several States are sovereign within their own limits, subject

only to the Constitution of the United States, which is a trust delegated to the Confederacy. But this is not the case with the Territories.

The power of governing territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, has been said to result necessarily from the facts that it is not within the jurisdiction of any particular State and is within the power and jurisdiction of the United States. "The right to govern would seem to be the inevitable consequence of the right to acquire territory."—(American Insurance Company *vs.* Canter, 1 Peters R., 542.)

With respect to the vast territories belonging to the United States, Congress has assumed to exercise over them supreme powers of sovereignty. Exclusive and unlimited power of legislation is given to them by the Constitution, and sanctioned by judicial decisions.—(Ibid. 511.)

The right of exclusive legislation carries with it the right of exclusive jurisdiction.—(United States *vs.* Cornell, 2 Mass., 60.)

Congress, therefore, having the exclusive right of legislation over the Territory of Utah, and having exercised that right by granting, in the organic act, the power to the supreme and district courts *eo nomine* to issue writs of *habeas corpus*, the act is complete, and the limitation conclusive; and any territorial legislation which extends, alters, or contravenes the organic act, must be inoperative. The authority exercised by the territorial legislature is in conflict with the provisions of the organic act in giving or extending a power which has been legislated upon and withheld by Congress.

Section six of the organic act of Utah says: "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."

The legislation of the territorial assembly giving power to the probate courts, or the judges thereof, to issue writs of *habeas corpus* is inconsistent with the organic act, and is therefore inoperative and void.

I answer, therefore, that the judges of the supreme and district courts of the Territory of Utah are entitled to issue writs of *habeas corpus*, and that the probate judge is not entitled to issue such a writ.

In regard to the latter clause of the second question, "Is a probate judge entitled to hold a court for the trial of civil or criminal cases?" I can only say that upon the jurisdiction of this court the organic act is silent.

I believe that the intention of Congress in creating a probate court, as its name indicates, was to give to it and limit it to the jurisdiction which appertains in the States and in the District of Columbia to orphans' courts, register of wills, probate, and surrogate courts, the jurisdiction under the various names of the courts in the several States being substantially the same; that is, the probate of wills, the administration of the estates of deceased persons, and the guardianship of minors, idiots, and insane persons, and perhaps the recording of deeds, mortgages, and other evidences of title to lands and other property in their respective counties.

The organic act, section 9, says: "That the supreme and district courts shall possess chancery as well as common law jurisdiction." The supreme court is an appellate tribunal. The district courts by this section are invested with common law powers to try civil and criminal cases, and chancery powers to try cases in equity. This jurisdiction may be, and I doubt not was, intended to be exclusive.

Civil cases, as well as criminal cases at common law are tried by jury.

Chancery or equity cases follow the procedure of the civil law, and are tried without jury.

The procedure and practice of the orphans' court, probate and surrogate courts, are derived from the ecclesiastical courts of England, which were founded on the civil law, and had cognizance of the estates of decedents, minors, &c., but had no jurisdiction at common law of civil or criminal cases. This, however, must be subject to judicial construction and decision, or to congressional explanation or enactment.

I am, sir, very respectfully, your obedient servant,

ALEXANDER WILSON,
United States Attorney for the Territory of Utah.

Colonel C. F. SMITH,
United States Army, Camp Floyd, commanding.

PROVO CITY, UTAH TERRITORY,
March 9, 1859.

SIR: I have been informed that Captain H. Neill is cognizant of the fact that a soldier named William McKnee, who was deserting from the army at Camp Floyd, was found concealed in the care or custody of a man named John Cazier. I have prepared a bill of indictment, under the act of Congress, charging said Cazier with procuring and enticing the said McKnee to desert, and it will be necessary to present witnesses before the grand and petit juries. I have sent by the bearer of this note a subpena for Captain Neill, and would be much obliged if Captain Neill knows of any other person or persons who may be able to testify on the part of the prosecution, that their name or names may be inserted in the subpena, and that they may come to Provo as soon as convenient. I would also very respectfully ask that you would cause me to be informed of any other offenses committed within or against your command, cognizable before the United States district court now in session at this place.

I am, very respectfully, your obedient servant,

ALEXANDER WILSON,
United States Attorney for Utah Territory.

Colonel C. F. SMITH,
United States Army, Camp Floyd, commanding.

P. S. The following named witnesses are now here: Michael Woods and Patrick Carter, in the case of a man named Jerrold, charged with

shooting a soldier, named James Rourk, in the knee; Patrick Shead, in the case of Henry Jenkins, charged with stealing a soldier's overcoat from a soldier; John Boyce, also a witness in same case; Edward Doyle, in the case of William Beardshall, charged with purchasing a pair of soldier's pantaloons from Patrick Loughlin. These, with the desertion case first mentinned, are all the cases which have been brought to my knowledge, and the persons above named are all the witnesses, as I have been informed, that are here at present.

A. W.

To the above letter and postcript I received the following answer, of which letter the following is a copy:

HEADQUARTERS, CAMP FLOYD, UTAH TERRITORY,
March 10, 1859.

SIR: I am in receipt of your letter of the 9th instant, and have directed Captain *Neill* to report to you, as a witness, without delay. I know of no other cases to present to you than those already before your court.

Very respectfully, yours, &c.,

C. F. SMITH,
Colonel United States Army com'd'g.

MR. ALEXANDER WILSON,
United States District Attorney, Provo, U. T.

Letter indorsed:

MR. ALEXANDER WILSON,
United States District Attorney,
Provo, Utah Territory.

Politeness of Captain T. H. NEILL.

PROVO CITY, UTAH TERRITORY,
March 14, 1859.

SIR: The grand jury this morning have found a "true bill" in the case of John Cazier, charged with procuring and enticing William McKnee, a soldier, to desert from your command.

From the evidence of Captain Neill, who was the only witness before the grand jury, and the only witness I have here in the case, I learned for the first time that there were four other soldiers who deserted at the same time, and who, it is said, were assisted in their desertion by Cazier. These names, I have been informed, are Gotlieb Mass, John Graff, William Dolan, and Frederick Fauzcell.

As this is an offense which strikes at the integrity of the service, and which, as such, you feel a deep interest in having detected and punished, I have taken the liberty of again sending to you for witnesses.

The act of Congress on which this prosecution is founded states the word "soldier" in the singular number only, and I believe it proper

that there should be a separate indictment in the case of each soldier. Captain Neill's testimony is direct as to McKnee only. I wish to prove positively the bargain which was made by the soldiers with Cazier to carry them off, or to assist in their desertion.

I have been informed by Captain Neill that the following named persons will be able to prove that fact, viz: Sergeant Jacob Wahl, C company, fifth infantry, privates William McKnee, D company, fifth infantry, and Frederick Fauzcell, of seventh infantry. Both of the latter are now undergoing sentence for desertion; this, however, I do not believe will incapacitate them as witnesses in the civil court.

I shall be much obliged, and I am sure the cause of justice and the protection of your service hereafter in like cases will be materially enhanced, if you will cause them, under such regulations as you shall deem proper, to be sent to this court.

I am, sir, very respectfully, your obedient servant,

ALEXANDER WILSON,
United States Attorney for Utah Territory.

Colonel C. F. SMITH,
U. S. Army, Camp Floyd, commanding.

On the 16th, I received a letter in reply to the above, of which letter the following is a copy:

HEADQUARTERS, CAMP FLOYD, UTAH TERRITORY,
March 16, 1859.

SIR: I have to acknowledge the receipt of your communication of the 4th instant, announcing your opinion as to the want of legal power in a probate judge in this Territory to issue a writ of *habeas corpus*, or to hold a court for the trial of civil or criminal cases.

Mr. Snow, a probate judge residing at Cedar fort, some five miles north of this, has, as I have been informed and do not doubt, issued writs for holding a court soon, has caused jurors to be summoned, &c.

I received last evening, by Captain Neill, your letter of the 14th instant, and will send by Monday next the three witnesses named by you in the case of Cazier.

Very respectfully, your obedient servant,

C. F. SMITH,
Colonel U. S. Army, commanding.

ALEXANDER WILSON, Esq.,
U. S. Attorney for Utah, Provo, Utah Territory.

PROVO CITY, UTAH TERRITORY,
March 16, 1859.

SIR: I have been informed that certain murders have been committed by Indians, as alleged, within your superintendency, in the second judicial district of the Territory of Utah, viz:

Two men named Josiah Call and Samuel Brown, citizens of Willard county, were found dead on a dividing ridge between Chicken creek

and the Seveir river, in Juab county, in the month of October, 1858, and said to have been killed by Indians.

Also, several white persons, supposed to be four or six in number, were said to have been killed by Indians in Salt Creek cañon, Juab county, about the month of June, 1858.

Also, the Mountain Meadow massacre, in Washington county, where some one hundred persons, emigrants to California, were said to have been killed by Indians in the month of September, 1857.

None of the Indians alleged to have committed, or to have been engaged in the commission of any of the abovementioned murders have been arrested, nor are they, or any of them, known, so far as I have been informed.

I would very respectfully call your attention to the following acts of Congress, relating to this subject, viz:

The act of June 30, 1834, section 19, (4 Statutes at Large, 729, &c.,) says: "It shall be the duty of the superintendents, agents, and subagents, to endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, or misdemeanor, and all other persons who may have committed crimes or offenses within any State or Territory and have fled to the Indian country, either by demanding the same of the chiefs of the proper tribe or by such other means as the President may authorize; and the President may direct the military force of the United States to be employed in the apprehension of such Indians, and also in preventing or terminating hostilities between any of the Indian tribes."

The 25th section of the same act says: "So much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States shall be in force in the Indian country: *Provided*, The same shall not extend to crimes committed by one Indian against the person or property of another Indian."

The 1st section of the same act says: "That all that part of the United States west of the Mississippi, and not within the States of Missouri, Louisiana, or the Territory of Arkansas, and also that part of the United States east of the Mississippi river, and not within any State to which the Indian title has not been extinguished, for the purpose of this act, be taken and deemed to be Indian country."

The 7th section of the act of February 27, 1851, (9 Statutes at Large, 586,) says: "All the laws now in force regulating trade and intercourse with the Indian tribes, or such provisions of the same as may be applicable, shall be, and the same are hereby, extended over the Indian tribes in the Territories of New Mexico and Utah."

In view, therefore, of the provisions of the above acts of Congress, and presuming that you will consider the same as applicable to the cases abovementioned, and the exercise of your official functions proper in the premises, I would respectfully ask your aid and coöperation in bringing the perpetrators of the above murders to speedy justice.

I am, sir, very respectfully, your obedient servant,

ALEXANDER WILSON,
Attorney of the U. S. for the Territory of Utah.

Dr. J. FORNEY,
Superintendent of Indian Affairs, Utah Territory.

NOTE.—Attached hereto is the answer which I received to the above letter.

A. W.

SUPERINTENDENT'S OFFICE, UTAH,
Great Salt Lake City, August 10, 1859.

SIR: Your letter written at Provo city, and received by me there, and extracts from several "acts of Congress," has been duly considered.

In compliance with your request, I have made diligent inquiry in relation to the Mountain Meadow massacre, September 8, or 9, 1857.

The inclosed extracts from a letter to the Commissioner of Indian Affairs contains correct information of that tragedy, by which it appears evident that the massacre in question was concocted by white men, and consummated by whites and Indians.

Below are some of the names of parties whom I consider guilty:

J. C. Haight, president, Cedar City.
John D. Lee, elder, Harmony.
—— Smith, bishop, Cedar City.
John W. Higby, Cedar City.
David Tulis, Santa Clara.
Carll Shirts.
—— Thornley, Painter creek.
—— Tate, Santa Clara.

Witnesses.—Mrs. Jacob Hamblin, Jacob Hamblin, at Santa Clara. There are many others who were engaged in the massacre. I will furnish you with others.

I remain, very respectfully, your obedient servant,

J. FORNEY,
Sup't Indian Affairs Utah Territory.

ALEXANDER WILSON, Esq.

The "extracts from a letter to the Commissioner of Indian Affairs" were inclosed with the above letter, which I received from Dr. Forney's clerk on the 18th of August, 1859.

At the time I received the letter, the superintendent had started on a journey to Ruby valley, some three or four hundred miles from Salt Lake City, westward and southward.

I wrote and sent a letter after him, of which the following is a copy:

GREAT SALT LAKE CITY, UTAH TERRITORY,
August 19, 1859.

SIR: Your communication in regard to the Mountain Meadow massacre, bearing date August 10, 1859, was handed me yesterday by Mr. C. E. Bolton, in which communication you give me extracts from your

letter to the Commissioner of Indian Affairs, and also the names of certain persons whom you consider guilty. Will you please furnish me or Mr. Stephen DeWolfe, who will attend to the duties of my office at the court at Nephi, owing to my ill-health, with all the *evidence* you may have in your possession, or under your command, or within your knowledge, in relation to the Mountain Meadow massacre.

I would respectfully suggest that your own presence at the court at Nephi, as soon as your other duties will permit, would be very desirable in the investigation of the Mountain Meadow massacre.

I am, very respectfully, your obedient servant,

ALEXANDER WILSON,
Attorney of the U. S. for the Territory of Utah.

Dr. JACOB FORNEY,
Supt. Indian Affairs, Utah Territory.

TERRITORY OF UTAH, *Utah County, ss:*

To P. K. Dotson, marshal of said Territory, greeting: Whereas, complaint has been made before me on the oaths of Elvira L. Parrish and Orvin E. Parrish, that Alexander F. McDonald, H. H. Carnes, John Daly, Abram Durfey, and Joseph Bartholomew, were guilty of the crime of willful murder, committed upon the bodies of William R. Parrish, William B. Parrish, and G. G. Potter, on the 14th day of March, 1857, at the city of Springville, in the county and Territory of Utah; and, whereas, I examined into the truth of said complaint and was satisfied that there was probable cause for believing that said parties participated in the commission of said crime—these are, therefore, to command you to take the said Alexander F. McDonald, H. H. Carnes, John Daly, Abram Durfey, and Joseph Bartholomew, into your custody, and them safely keep, so that you have their bodies before the district court of the United States for this district at the next term thereof; and hereof fail not, under the penalty of the law.

Given under my hand this 2d day of April, in the year 1859.

JOHN CRADLEBAUGH,
Associate Justice of the Supreme Court,
ex officio Judge Second Judicial District Court, U. T.

GREAT SALT LAKE CITY, U. T.,
Tuesday morning, June 21, 1859.

SIR: I received your letter last evening in regard to the custody of four prisoners in the guard-house at Camp Floyd. In reply, I have to say that those prisoners were taken to Camp Floyd without any consultation with me whatever, and contrary to my express statement, at the time of their commitment, to the judge in open court, that the proper place for them was in the custody of the civil authorities.

The duty of providing jails or other places for the safe-keeping of prisoners, and of providing for the payment of the expenses attending

thereupon rests, I believe, with the legislature of the Territory, or the civil authorities of the respective counties. The governor of the Territory, the chief executive civil officer will, I have no doubt, furnish you, upon application to him, with the information upon those points inquired of in your letter.

In regard to my opinion of your duty in the premises, which you request, I can only say that I shall at all times deem it a pleasure cordially, when requested, to give you any information in my power.

Your duty as the executive officer of the court, I take it for granted, is fully understood by yourself.

In regard to the means provided, should they be found inadequate under existing territorial enactments, I do not doubt you will be fully justified and sustained by law in making such necessary proper arrangements as will enable you to accomplish and carry out the duty which the law has cast upon you in the premises.

By an act of Congress passed May 4, 1858, (Pamphlet Laws, 1858, page 368,) it is *provided*, "That on the restoration of peace in said Territory, (Utah,) the expenses of said courts when exercising jurisdiction under the territorial laws, shall be chargeable to the Territory, or to the counties, as in other Territories." Peace has been declared to exist, and does exist in this Territory, and the above provision is fully operative and binding upon the Territory.

There is a certain provision made in the fee-bill passed by the last legislature of this Territory, but whether it is adequate to the case in point I cannot say. I would suggest, under the provisions of this fee-bill, and from other matters which may occur to you, whether the sheriffs of the respective counties may not be considered the jailors therein. But whether any judicial decisions have been made in this Territory to that effect, I am not informed, and therefore I do not expect you to act upon this suggestion unless it shall appear to you to be perfectly consistent with your duties and responsibilities in the premises.

Should this view, however, appear to you to be correct, then the sheriff of Utah county would be chargeable with keeping the prisoners in question after they shall have been delivered by you into his keeping, either as your deputy for that purpose, or as the jailor of the county, as you shall be of opinion the exigencies of the case and the command of your mittimus requires for the certain safe-keeping of the prisoners.

I would also call your attention to the resolution of September 23, 1781, (1 Statutes at Large, 96,) in which it is resolved, "that in case any State shall not have complied with the said recommendation, the marshal in such State, under the direction of the judge of the district, be authorized to hire a convenient place to serve as a temporary jail, and make the necessary provision for the safe-keeping of prisoners committed under the authority of the United States, until permanent provision shall be made by law for that purpose, and the said marshal shall be allowed his reasonable expenses incurred for the above purposes, to be paid out of the treasury of the United States." This resolution, by its express terms, of course applies only to commitments under the laws of the United States, and to States. But I also, in this

connection, call your attention to the 17th section of the organic act of the Territory of Utah, which says, "that the Constitution 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."

Of course, even if this resolution should be adjudged to the case in point, the Territory of Utah, under the proviso first above-mentioned, would be responsible for the necessary expenses incurred.

The foregoing views are furnished you, at your request, as the best information I can at present obtain, and are of course all extra-judicial, and subject to the adjudication of the courts.

I am, very respectfully, your obedient servant,

ALEXANDER WILSON,
United States Attorney for Utah Territory.

PETER K. DOTSON, Esq.,
United States Marshal for Utah Territory.

Copy of nolle prosequi entered by A. Wilson, in two indictments charging Brigham Young and others with treason, found at the district court in Green River county, 1858.

Whereas, at a district court in and for the first judicial district, in the Territory of Utah, held in Green River county, in said Territory, of December term, 1857, a bill of indictment was found by the grand jury thereof, charging Brigham Young, Heber C. Kimball, Daniel H. Wells, John Taylor, George D. Grant, Lot Smith, Porter Rockwell, William A. Hickman, Albert Canington, Joseph Taylor, William Stowell, Lewis Robinson, Joshua Terry, John Harvey, Daniel Jones, Phineas Young, William Young, Robert Burton, James Ferguson, and Ephraim Hancks, with treason against the United States, which said indictment was filed in said court on the 30th day of December, anno Domini 1857; and whereas, at the April term, 1858, of said district court, held in Green River county, for the first judicial district, in the Territory of Utah, as aforesaid, the grand jury thereof found another bill of indictment, charging Matthew Thompson, Brigham Young, and Daniel H. Wells with treason against the United States, which said indictment was filed in said court, April 5, 1858; and whereas the said Green River county and the first judicial district, by the act of the territorial legislature of Utah, passed January 21, 1859, have been changed into, and now, since the passage of said act, form a part of and belong to the third judicial district, in the Territory of Utah, and the said indictments beforementioned are legally within the jurisdiction of the district court for the said third judicial district, in the Territory of Utah; and whereas the President of the United States, by his proclamation, bearing date the 6th day of April, 1858, pardoned said alleged treasons mentioned in said bills of indictment: Therefore, and now, that is to say, on the 18th day of August, anno Domini 1859, at the July term of the said district court for the said third judicial district, in the Territory of Utah, holden at Great Salt Lake City, Hon. Charles E. Sinclair, judge, cometh Alexander Wilson, attorney of the United States for the Territory of Utah, who for the said United

States in this behalf prosecuteth, and saith that the said Alexander Wilson, attorney as aforesaid, will not further prosecute said Brigham Young, Heber C. Kimball, Daniel H. Wells, John Taylor, George D. Grant, Lot Smith, Porter Rockwell, William A. Hickman, Albert Canington, Joseph Taylor, William Stowell, Lewis Robinson, Joshua Terry, John Harvey, Daniel Jones, Phineas Young, William Young, Robert Burton, James Ferguson, and Ephraim Hancks, and the said Matthew Thompson, Brigham Young, and Daniel H. Wells, on behalf of the said United States, on the said indictments above-mentioned: Therefore, let all further proceedings be altogether stayed here in court against them, the said Brigham Young, Heber C. Kimball, Daniel H. Wells, John Taylor, George D. Grant, Lot Smith, Porter Rockwell, William A. Hickman, Albert Canington, Joseph Taylor, William Stowell, Lewis Robinson, Joshua Terry, John Harvey, Daniel Jones, Phineas Young, William Young, Robert Burton, James Ferguson, and Ephraim Hancks, and the said Matthew Thompson, Brigham Young, and Daniel H. Wells, upon the indictments aforesaid.

ALEXANDER WILSON,
Attorney of the United States for the Territory of Utah.

Whereas I, Alexander Wilson, attorney of the United States for the Territory of Utah, in consequence of ill health, am unable to attend court.

Now, therefore, from said cause of ill health, and by virtue of the act of Congress of 16th August, 1856, section 14, (11 Statutes at Large, 51,) I, the said Alexander Wilson, do hereby substitute and appoint Stephen De Wolfe, Esq., a meet and proper person, learned in the law, to attend to such business as may appertain to the duties of my office of attorney of the United States for the Territory of Utah, at the term of the district court for the first judicial district in the Territory of Utah, which has been appointed to commence, in said district, at the town of Nephi, on the twenty-second day of August, A. D. 1859, and to take and receive the fees and charges lawfully appertaining to the discharge of said duties, at said term of said district court.

In testimony whereof, I have hereto set my hand this twentieth day of August, in the year of our Lord one thousand eight hundred and fifty-nine, at Great Salt Lake City, in the Territory of Utah.

ALEXANDER WILSON.
Attorney of the United States for the Territory of Utah.

I sent a letter to Judge Eckles by the hands of Mr. De Wolfe, of which the following is a copy:

GREAT SALT LAKE CITY, UTAH TERRITORY,
August 20, 1859.

SIR: Owing to continued ill health I am unable to attend the court to be held by you, for the first judicial district, appointed to commence at Nephi on Monday next, 22d instant, and I have, in consequence

thereof, appointed Stephen De Wolfe, Esq., to attend to the duties appertaining to my office of attorney of the United States for the Territory of Utah, at said court; said appointment being made in accordance with the provisions of the act of Congress of 16th August, 1856, in such case made and provided.

Permit me to bespeak for Mr. De Wolfe, who kindly accepts this trust, your kind regards.

I am, very respectfully, your obedient servant,

ALEXANDER WILSON,

Attorney of the United States for the Territory of Utah.

Hon. D. R. ECKLES,

Chief Justice Utah Territory.

GREAT SALT LAKE CITY, UTAH TERRITORY,

August 22, 1859.

SIR: I will be unable to go to Carson valley, to attend the district court, appointed to meet at Genoa on the fourth Monday in September next, and having no knowledge of any person living in Genoa, or in that district, who I could substitute, I must ask that such person, as shall to you, the judge, seem meet and proper, may be appointed by the court to attend to such business as may appertain to the office of United States attorney in said district, before said district court. I will inform the Secretary of the Interior that the appointee of the court will perform said duties, and he will be entitled to the lawful fees appertaining thereto.

I am respectfully, your obedient servant,

ALEXANDER WILSON,

United States Attorney for Utah Territory.

Hon. JOHN CRADLEBAUGH,

Judge Second Judicial District, Carson Valley, Utah Territory.

NOTE.—The above letter I deposited in the post office in Salt Lake City, and on the 30th of August I wrote a duplicate of said letter, and sent it to Genoa by the hands of the mail-coach drivers, paying the postage with a letter stamp. In this duplicate letter I added the following words: "I deposited in the post office here a letter similar to the above, on the day of the date, but being informed since that the regular California mail would not go out again for some two weeks, I have thought it proper to send this duplicate by the opportunity which goes out to-morrow, August 31."

Yours, truly, ALEXANDER WILSON.

NEPHI, UTAH TERRITORY, *August* 28, 1859.

SIR: I arrived here on Tuesday last, by way of Camp Floyd; found the court in session, and the grand jury, in waiting on the prosecuting attorney, having decided, on finding an indictment against David

McKenzie, for forgery. A true bill was presented against McKenzie the next day, and yesterday he was tried under it, and found guilty by the jury. The judge regarding the act of forgery committed by the parties as a conspiracy entered into to commit crime, and as the crime was consummated in the first district, all parties connected in the crime were properly tried in the first district, whether their own particular connection with the crime was in that district or some other. The law, I think, clearly sustained the judge's opinion. The judgment of the court against McKenzie has been deferred till Monday.

The grand jury have found bills of indictment against several parties for murder, among them a bill against John T. Rice, the man who shot Price some time ago at Frog Town, and who immediately fled, and has probably escaped the Territory. Also, against William Bird in the Parrish murder, and a George W. Hancock and seven or eight other persons as accessories in the murder of Henry Jones. None of these parties are in custody, and I suppose there is little likelihood of the arrest of any of them.

Nothing has yet been done before the grand jury in regard to the Mountain Meadow massacre. I presume, none of the witnesses in regard to it, are here, and I have called for no subpenas against any of them, regarding it, as you no doubt do, as altogether foolish and useless to institute any investigation into the matter, unless it could be gone into fully and thoroughly; and this, I believe, it is impossible to do at the present term of this court, with all the witnesses so far away, and the difficulty, if not impossibility of bringing them before the court in any reasonable time.

The session of the court is progressing in every respect smoothly and quietly. There is scarcely any one in attendance but those who have been summoned as jurors or witnesses, besides the officers of the court.

A presentment was yesterday made by the grand jury to the court, complaining of the want of pay for their services, the meager accommodations of the place, and the insufficiency of the pay given them to defray actual expenses incurred in attending the court. The presentment contained no prayer to the judge or court, and I do not know exactly what practical aim or result was expected by it, although I drew the presentment at the request of the jury.

I have not found the difficulties of my position as prosecutor here, as great as I anticipated before coming. Judge Eckles has most kindly afforded his opinion and advice, as often as I have had occasion to consult him concerning my duties; and I have thus far met with scarcely any difficulty in the performance of the duties devolving on me, though I can by no means say that they have been well performed. There is, I think, some likelihood of the court adjourning next week, if the persons indicted for murder are not found by that time. If it continues in session longer, and any matter of interest arises, I will again let you hear.

Respectfully, yours,

S. DE WOLFE.

ALEXANDER WILSON, Esq.,
United States Attorney, Salt Lake City.

P. S. McKenzie sentenced for two years. The grand and petit jurors discharged last evening. Court will probably adjourn in a day or two.

S. DE WOLFE.

TUESDAY, *August* 30, 1859.

GREAT SALT LAKE CITY, UTAH TERRITORY,
September 8, 1859.

SIR: I would respectfully request that, if you have on file in your office, or if you are otherwise cognizant of any letter or letters from any of the departments at Washington city, directed to the United States attorney in the Territory of Utah, concerning any alleged trespasses upon public lands in said Territory, that you will furnish me with the same, or copies thereof, at your earliest convenience.

I would also refer you to the third section, on page 8, of the printed instructions of the Solicitor of the Treasury of the United States, published in pamphlet form, December 10, 1852. The words of which section are as follows, viz:

"The clerks of the various courts will give notice in writing to the district attorney of the proper district, of all acts of trespass, and breaches of the revenue or other laws, whereby pecuniary penalties in favor of the United States, have been incurred by the wrong-doers, which shall come to the knowledge of such clerks, or of which they shall be credibly informed, stating the particular act, with the time when committed, and the names and residence of the witnesses if known, and will immediately forward to the office of the Solicitor, a copy of such notice.

Very respectfully, yours, &c.,

ALEXANDER WILSON,
United States Attorney for Utah Territory.

DAVID A. BURR, Esq.,
Clerk Third Judicial District Court, Utah Territory.

NOTE.—I received no answer to the above communication.

A. W.

GREAT SALT LAKE CITY, UTAH TERRITORY,
September 12, 1859.

SIR: I would respectfully announce to your excellency that I contemplate visiting the East this fall, with Mrs. Wilson, whose health, as I have been informed by her physician, a copy of whose written and concurrent opinions thereupon I herewith inclose for your perusal, will not admit of another winter's sojourn in this region.

I would further state, as another and distinct reason for leaving, that the compensation appertaining to my office is wholly inadequate, and unless proper addition be made thereto, I shall be compelled to

resign. Since my arrival in this Territory, on the 5th of November last, I have received from the government $383 97, while my necessary expenses during the same period have been $1,864 31.

Desiring to meet with the approval of your excellency in the matter, I respectfully submit for your consideration my contemplated departure, and the causes which I believe imperatively control my action in the premises.

I will substitute a proper person to perform the business appertaining to my office, and unless determined otherwise, as your excellency shall think the public service in this Territory may demand, I shall leave on the 19th instant, and proceed directly to washington city, and, unless adequate compensation be allowed, I shall there in person tender the resignation of my office.

Expressing my thanks for the very kind consideration which I have always received from your excellency, I am, very respectfully, your obedient servant,

ALEXANDER WILSON,
United States Attorney for Utah Territory.

His Excellency A. CUMMING,
Governor of Utah Territory.

Be it remembered that I, Alexander Wilson, Attorney of the United States for the Territory of Utah, in consequence of necessary absence from said Territory, do hereby from said cause, and by virtue of the act of Congress of August 16, 1856, section 14, (11 Statutes at Large 51,) substitute and appoint Hosea Stout, Esq., a meet and proper person, learned in the law, to attend to such business as may appertain to the duties of my office in the district court for the third judicial district, in the said Territory, at the July term, 1859, and the adjournment thereof, and to perform the duties appertaining to my office of public prosecutor in the said Territory of Utah, during my absence, or until my successor shall be appointed, and to receive the fees and charges lawfully appertaining to the discharge of said duties.

In testimony whereof, I have hereto set my hand, this seventeenth day of September, in the year of our Lord one thousand eight hundred and fifty-nine, at Great Salt Lake City, in the Territory of Utah.

ALEXANDER WILSON,
Attorney of the United States for the Territory of Utah.

GREAT SALT LAKE CITY,
September 17, 1859.

SIR: I deem it to be my duty to inform your honor that I am about to start on a visit to the East with Mrs. Wilson, whose health will not admit of another winter's sojourn in this region. I shall proceed direct to Washington city, and if there can be no adequate provision made for my pecuniary compensation in this Territory, I shall there, in person, tender the resignation of my office. I tendered the appoint-

ment to Stephen De Wolfe, Esq., to act as my deputy in the first judicial district, during my absence, or until my successor should be appointed, but in consequence of other engagements, Mr. De Wolfe declined accepting the same.

I have therefore appointed Hosea Stout, Esq., to perform the duties which appertain to my office in the Territory of Utah, during my absence, or until my successor shall be appointed. I take the liberty herewith of inclosing you a copy of Mr. De Wolfe's letter of declination.

I am, very respectfully, your obedient servant,

ALEXANDER WILSON,
United States Attorney for Utah Territory.

Hon. D. R. ECKLES,
Chief Justice Utah Territory.

The following is a copy of Mr. De Wolfe's letter, mentioned in the above letter, to Judge Eckles:

SALT LAKE CITY, *September* 17, 1859.

SIR: In consequence of the different engagements now on my hands, and of the little probability of my continuing very long in this Territory, I am forced to decline the appointment you this morning tendered to me of deputy United States attorney for the first judicial district of Utah Territory.

Respectfully, your obedient servant,

S. DE WOLFE.

ALEXANDER WILSON, Esq.,
United States Attorney for Utah Territory.

GREAT SALT LAKE CITY, UTAH TERRITORY,
September 17, 1859.

SIR: I deem it to be my duty to inform your honor that I am about to start on a visit to the East with Mrs. Wilson, whose health will not admit of another winter's sojourn in this region. I shall proceed direct to Washington city, and if there can be no adequate provision made for my pecuniary compensation in this Territory, I shall there, in person, tender the resignation of my office.

I have substituted Hosea Stout, Esq., to perform the duties appertaining to my office during my absence, or until my successor shall be appointed.

I am, very respectfully, your obedient servant,

ALEXANDER WILSON,
United States Attorney for Utah Territory.

Hon. CHARLES E. SINCLAIR,
Judge Third Judicial District Court, Utah Territory.