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IN THE HOUSE OF REPRESENTATIVES.

FEBRUARY 3, 1873.

Read twice, referred to the Committee on the Judiciary with leave to report at any time, and ordered to be printed.

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Mr. MERRITT, on leave, introduced the following bill:

**A BILL**

In aid of the execution of the laws in the Territory of Utah, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That the United States marshal of Utah Territory may ap-  
4       point deputies in each of the judicial districts of said Territory.  
5       Said deputies shall be authorized to enter upon the discharge  
6       of their duties upon the approval of such appointment by the  
7       judge of the district court of the district for which each is  
8       appointed; and said deputies must take and subscribe the  
9       same oath prescribed by law to be taken by the marshal, and  
10      give bond, with good and sufficient sureties, to said marshal  
11      in the penal sum of ten thousand dollars, conditioned for the  
12      faithful discharge of their duties as such deputy; and said

13 appointment, approval, oath, and bond shall be entered upon  
14 the records of said court.

1       SEC. 2. That it shall be the duty of said marshal, in  
2 person or by his deputies, to attend the district and supreme  
3 courts of said Territory, and serve and execute all process,  
4 orders, judgments, or decrees issued, rendered, or directed by  
5 said courts or by any judge thereof.

1       SEC. 3. That the United States district attorney of said  
2 Territory may also appoint an assistant in each of the judicial  
3 districts of said Territory: *Provided*, That before any such  
4 assistant shall enter upon the discharge of his duties his ap-  
5 pointment must be approved by the presiding judge of the  
6 district court of the district for which such appointment is  
7 made, and said assistant must take and subscribe to the same  
8 oath prescribed by law to be taken by the district attorney;  
9 and said appointment, approval, and oath shall be entered  
10 upon the records of said courts. Such assistants shall receive  
11 the same fees and emoluments as the district attorney would  
12 have been entitled to for the same service.

1       SEC. 4. That it shall be the duty of said district attorney,  
2 in person or by his assistants, to attend all of the courts of  
3 said Territory and perform the duties of prosecuting attorney  
4 in all criminal cases arising in said courts.

1       SEC. 5. That only citizens of the United States, over the

2 age of twenty-one years, shall be competent to serve as grand  
3 or petit jurors in said Territory.

1 SEC. 6. That the grand jury of said Territory shall con-  
2 sist of fifteen good and lawful men, twelve of whom concur-  
3 ring may find and return a bill of indictment.

1 SEC. 7. That whenever a district judge of said Terri-  
2 tory shall determine that a grand or petit jury will be needed  
3 at a term of his court, the said judge, the said United States  
4 attorney, and the United States marshal shall make a list in  
5 writing of one hundred male citizens of the United States  
6 residing in said Territory, and shall affix thereto their certifi-  
7 cate to the effect that the same is the list from which the  
8 grand and petit jurors are to be drawn for the ensuing term  
9 of the court, and shall cause the same to be filed in the office  
10 of the clerk of said court; and whenever the judge shall order  
11 the clerk to issue a venire, the clerk in the presence of the  
12 said attorney and marshal or their deputies shall write the  
13 name contained in the said list, each on a separate slip of  
14 paper, all the slips being of the same size and kind, and shall  
15 fold them uniformly so that the name written thereon shall  
16 be concealed, shall then place them in a covered box and  
17 thoroughly mix and mingle them, and shall then draw there-  
18 from the requisite number of names. If a grand jury be  
19 required, it shall be drawn first. Both grand and petit juries  
20 thus drawn shall consist of the same number of men as are

21 required in the circuit and district courts of the United States.  
22 The clerk shall make a list in writing of the names of the  
23 persons constituting each panel so drawn, and the clerk,  
24 attorney, and marshal shall affix thereto their certificates of  
25 the time and place of such drawing, and file the same in the  
26 office of said clerk, who shall forthwith issue a venire to the  
27 said marshal, commanding him to summon the men so drawn  
28 to attend and serve as such jurors at the time and place pre-  
29 viously designated by the said judge, and such jurors shall  
30 constitute the regular panel for such term of the court for  
31 all cases, whether arising under the laws of the United States  
32 or under the laws of said Territory. If at any time talesmen  
33 shall be required, their names may be drawn from the said  
34 box by the clerk in open court, or they may be summoned  
35 from the bystanders or from the vicinage as the presiding  
36 judge shall direct. No challenge shall be allowed on the  
37 ground that a juror had been summoned or had served at a  
38 previous time of court. Each party, whether in civil or  
39 criminal cases, shall be allowed six peremptory challenges.  
40 In criminal cases the court and not the jury shall pronounce  
41 the punishment under the limitation prescribed by law.

1        SEC. 8. That in all suits or proceedings at law or in  
2 equity wherein the United States are neither a party nor in-  
3 terested, costs may be taxed against and collected of the proper  
4 parties, under the direction of the court or of the clerk thereof,

5 and the collection thereof enforced by execution or attach-  
6 ment against the property of the party. The fees of the  
7 jury shall be advanced by the winning party, but may be  
8 recovered back as a part of the costs in the case.

1       SEC. 9. That the United States attorney, United States  
2 marshal, and each grand and petit juror, shall receive for his  
3 services in criminal cases or proceedings arising under the  
4 laws of the Territory, the same fees or compensation as are  
5 allowed for like services in criminal cases or proceedings  
6 arising under the laws of the United States, and such fees or  
7 compensation being fixed by the court or judge before whom  
8 the services are rendered, or, in case of the attorney and mar-  
9 shal, by the supreme court of the Territory, shall be paid to  
10 the said attorneys, marshal, and jurors respectively from the  
11 territorial treasury on the thirtieth day of June and thirty-  
12 first day of December in each year; and if the territorial  
13 legislature shall fail to provide by law for the payment of said  
14 fees and compensation, then the same shall be paid out of the  
15 money appropriated by Congress for the compensation of  
16 members of the territorial legislature.

1       SEC. 10. That whenever marriage in said Territory of  
2 Utah rests solely on the contract of the parties followed by  
3 cohabitations, there being no form, manner, or ceremony pre-  
4 scribed therefor by the laws of said Territory, or requiring  
5 any recordation certificate or publication of the same, in such

6 case in all prosecutions for bigamy, polygamy, or adultery, it  
7 shall not be necessary to prove either the first or subsequent  
8 marriage by the registration or certificate thereof or other  
9 recorded evidence, but the same may be proved by such evi-  
10 dence as is admissible to prove a marriage in other cases, and  
11 proof of cohabitation by the accused with more than one  
12 woman as husband and wife, his declaration or admission that  
13 such women are his wives, his acts, recognizing, acknowledg-  
14 ing, introducing, treating, or deporting himself toward them  
15 as such, shall be admissible as evidence.

1       SEC. 11. That in all cases or proceedings when impris-  
2 onment may be ordered, if there be no jail or prison in which  
3 the person to be imprisoned can with safety be kept, the court  
4 or judge may order such person to be confined in any military  
5 prison or camp of the United States in said Territory, and  
6 the officer or person in command of such prison or camp is  
7 hereby authorized and required, on the order of the court or  
8 judge, to receive and safely keep such person until he shall be  
9 lawfully discharged from custody.

1       SEC. 12. That if the United States marshal, or any of  
2 his deputies, shall be resisted, or threatened with resistance,  
3 in the execution of any writ, order, process, judgment, or  
4 decree of any court or judge of said Territory, said marshal,  
5 or either of his deputies, may, if, in his judgment, assistance is  
6 necessary, apply to the commander or person in charge of any



7 military camp or post of the United States in said Territory,  
8 or to any one having charge of troops of the United States  
9 therein, for a posse to aid such officer, and, upon such appli-  
10 cation being made, the commander or person in charge of  
11 such military camp, post, or troops is hereby authorized to  
12 detail a sufficient number of men to enforce the writ or other  
13 process, whatever it may be, which is being, or is threatened  
14 to be, resisted ; and said marshal, or either of his deputies, may  
15 make application for such assistance when necessary to sup-  
16 press any mob, riot, or other disturbance of the peace.

1       SEC. 13. That it shall be the duty of the governor of said  
2 Territory, so often as it shall appear necessary, to inspect, or  
3 cause to be inspected, the jails or other prisons in said Terri-  
4 tory, and the manner prisoners are held, treated, and impris-  
5 oned therein ; and the governor shall make rules for the regu-  
6 lation and government of said jails and prisons ; and he is  
7 hereby empowered to remove the wardens and keepers of all  
8 jails and prisons or other officers connected therewith, and  
9 appoint others in their stead, as often as, in his opinion, the  
10 public good shall require.

1       SEC. 14. That no alien living in, or practicing, bigamy or  
2 polygamy, shall be admitted to citizenship of the United States.

1       SEC. 15. That in the absence, or in case of sickness or  
2 disability, of any of the judges of said Territory, or for any  
3 cause whatever which renders it necessary, it shall be com-

4 petent for either of the judges to hold court in any of the  
5 judicial districts of said Territory ; and it is hereby made the  
6 duty of said judges, upon the request or direction of the exe-  
7 cution of said Territory in writing, setting forth the reason and  
8 necessity of such request or direction, to proceed to the dis-  
9 trict designated and hold the terms of the court therein until  
10 such necessity shall cease.

1       SEC. 16. That the probate judges, justices of the peace,  
2 judges at all elections, notaries public, and sheriffs in said  
3 Territory shall be appointed by the governor, be subject to  
4 removal by him, and shall hold their offices for the term pre-  
5 scribed by law, or until their successors are appointed and  
6 qualified.

1       SEC. 17. That an appeal by any party aggrieved shall  
2 be allowed from all final decisions, orders, judgments, or de-  
3 crees of all inferior courts in said Territory to the district  
4 court of the proper district ; and in correction of the pro-  
5 ceedings of such inferior courts of said Territory, and to pre-  
6 vent and correct abuses by the same, the district courts of  
7 said Territory are hereby authorized to issue writs of error,  
8 certiorari, mandamus, injunction, prohibition, and quo war-  
9 ranto ; and in all cases of appeal from one court to another,  
10 where a bona-fide or other security is required to be given by  
11 the party appealing, it shall not be lawful to demand or exact  
12 of such party the payment of costs adjudged or taxed against



13 him until the appeal shall be finally disposed of by the appel-  
 14 late court; and the supreme court of said Territory may  
 15 make rules and regulations as to the mode and manner of  
 16 taking and perfecting appeals from one court to another in  
 17 said Territory, and the security, if any to be given in such  
 18 appeals, so that the just rights of the parties may be secured  
 19 and preserved.

1       SEC. 18. That in all cases of election by ballot it shall  
 2 be unlawful for any person to put any number, figure, or de-  
 3 vice upon said ballot, whereby any person may be enabled  
 4 to ascertain by whom the ballot was given, and any viola-  
 5 tion, or attempt to violate, this provision, shall be deemed  
 6 and taken to be a felony, and upon conviction thereof the per-  
 7 son so offending may be punished by a fine not exceeding five  
 8 hundred dollars, or by imprisonment in the penitentiary not  
 9 exceeding one year, or by both such fine and imprisonment,  
 10 at the discretion of the court; and at all elections none but  
 11 male citizens of the United States, over twenty-one years of  
 12 age, residing in the precinct or election district, and not dis-  
 13 qualified by conviction of crime, shall be competent voters.

1       SEC. 19. That the probate courts in their respective  
 2 counties in said Territory are hereby authorized to hear, try,  
 3 and determine civil causes wherein the debt or damages  
 4 claimed does not exceed one hundred dollars, but shall not  
 5 exercise any criminal jurisdiction; and the twenty-ninth sec-

6 tion of an act of the territorial legislature of Utah conferring  
7 general and unlimited jurisdiction on the probate courts both  
8 in civil and criminal cases, entitled "An act in relation to the  
9 judiciary," approved January nineteenth, eighteen hundred  
10 and fifty-two; also, the second section of an act entitled "An  
11 act for the regulations of attorneys," approved February  
12 eighteen, eighteen hundred and fifty-two; and also an act  
13 entitled "An act containing provisions applicable to the laws  
14 of Utah," approved January fourteenth, eighteen hundred  
15 and fifty-four, be, and the same are hereby, disapproved and  
16 repealed.

1       SEC. 20. That the district courts of said Territory shall  
2 have exclusive original jurisdiction in all suits for divorces or  
3 alimony.

1       SEC. 21. That all laws and parts of laws of Utah Terri-  
2 tory which in any way interfere with the primary disposal of  
3 the soil or the possession thereof of the United States are  
4 hereby disapproved and annulled.

1       SEC. 22. That if any person not qualified to vote shall  
2 vote, or offer to vote, at any election, or if any qualified  
3 voter shall cast, or offer to cast, at any election more than  
4 one vote for the same officer or officers, he shall be deemed  
5 guilty of a misdemeanor, and shall, upon conviction thereof  
6 before any court having jurisdiction, be punished by a fine  
7 not exceeding five hundred dollars, or by imprisonment in

8 the penitentiary not exceeding one year, or by both such fine  
9 and imprisonment, at the discretion of the court.

1 SEC. 23. That this act shall take effect from and after  
2 its passage, and all acts and parts of acts of the United States  
3 or of the legislature of Utah, so far as the same are incon-  
4 sistent herewith, are hereby repealed and disapproved.

1 SEC. 24. That the time limited in the third section of  
2 the act of the legislative assembly of Utah entitled "An act  
3 prescribing rules and regulations for the execution of the  
4 trust created under an act of Congress entitled 'An act for  
5 the relief of the inhabitants of cities and towns on the public  
6 lands,' approved March, eighteen hundred and sixty-seven,"  
7 approved February seventeenth, eighteen hundred and sixty-  
8 nine, in which the rightful owners or claimants of lands within  
9 cities and towns of said Territory are required to file the  
10 statement prescribed by said act, shall not apply to persons  
11 who, at the expiration of said limitation, were either infants,  
12 feme-coverts, insane, or in prison, but such persons shall  
13 have one year after the removal of their disability in which  
14 to file said statement.

1 SEC. 25. That the common law of England in force in  
2 the colonies of America, at the date of the Declaration of  
3 Independence, is hereby extended over and declared to be in  
4 force in the Territories of the United States, so far as the  
5 same is applicable: *Provided*, That nothing herein shall be

6 construed to prevent the territorial legislatures of the respect-  
 7 ive Territories, from modifying the same, or pass codes of  
 8 civil procedure: *And be it further enacted*, That the act  
 9 of the territorial legislature of Utah entitled "An act limit-  
 10 ing the time of commencing civil actions," approved Feb-  
 11 ruary sixteenth, eighteen hundred and seventy-two, is hereby  
 12 disapproved.

1       SEC. 26. That section three of an act entitled "An act con-  
 2 cerning the property-rights of married persons," passed by the  
 3 legislative assembly of Utah, approved February sixteenth,  
 4 eighteen hundred and seventy-two, is hereby disapproved.