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OREGON TERRITORY.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

INVITING THE

Attention of Congress to the condition of things in the Territory of Oregon.

MAY 3, 1852.

Referred to the Committee on Territories, and ordered to be printed.

To the Senate and House of Representatives of the United States:

I invite the attention of Congress to the state of affairs in the Territory of Oregon, growing out of a conflict of opinion among the authorities of that Territory, in regard to a proper construction of the acts of Congress, approved the 14th August, 1848, and 11th June, 1850, the former entitled "An act to establish a territorial government of Oregon," and the latter entitled "An act to make further appropriations for public buildings in the territories of Minnesota and Oregon." In order to enable Congress to understand the controversy, and apply such remedy with a view to adjust it, as may be deemed expedient, I transmit,

1. An act of the legislative assembly of that Territory, passed February 1, 1851, entitled "An act to provide for the selection of places for the location and erection of public buildings of the Territory of Oregon;"

2. Governor Gaines's message to the legislative assembly of the 3d February, 1851;

3. The opinion of the Attorney General of the United States, of 23d April, in regard to the act of the Legislative Assembly of the 1st February, 1851;

4. The opinion of the supreme court of Oregon, pronounced on the 9th December, 1851;

5. A letter of Judge Pratt, of the 15th December, 1851, dissenting from that opinion;

6. Governor Gaines's letter to the President of the 1st January, 1852;

7. Report of the Attorney General of the United States on that letter, dated 22d March, 1852.

If it should be the sense of Congress that the seat of government of Oregon has not already been established by the local authorities pursuant o the law of the United States, for the organization of that Territory, or so established, should be deemed objectionable, in order to appease the

strife upon the subject which seems to have arisen in that Territory, I recommend that the seat of government be either permanently or temporarily ordained by act of Congress; and that that body should, in the same manner, express its approval or disapproval of such laws as may have been enacted in the Territory at the place alleged to be its seat of government, and which may be so enacted, until intelligence of the decision of Congress shall reach there.

MILLARD FILLMORE.

WASHINGTON, *April* 19, 1852.

No. 1.

An act to provide for the selection of places for location and erection of public buildings of the Territory of Oregon.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the seat of government of this Territory be, and hereby is, established and located at Salem, in the county of Marion; and each and every session, either general or special, of the Legislative Assembly of this Territory, hereafter convened, shall be held at the place above-named.

SEC. 2. The penitentiary or State prison of this Territory shall be, and hereby is, located and established at Portland, in the county of Washington.

SEC. 3. That the university shall be, and hereby is, located and established at Marysville, in the county of Benton; and all appropriations or donations of money or personal property, and all the proceeds of the sale of land or lands granted or donated to this Territory for the establishment and endowment of a university shall be applied to the erection of suitable buildings for, and endowment of, a university at the said place above-mentioned.

SEC. 4. That John Force, H. M. Waller, and R. C. Geer be, and are hereby, constituted a board of commissioners to superintend the erection of buildings at the place designated in the first section of this act as the seat of government; and the said commissioners, or a majority of them, shall agree upon a plan of said buildings, and shall issue proposals, giving two months' notice thereof, and contract for the erection of said buildings without delay; and the said commissioners shall agree upon one of their number to be acting commissioner, and said acting commissioner shall give bond to the United States in the sum of twenty thousand dollars, to be approved by the governor of this Territory, for the faithful performance of his duty, and said bond shall be filed in the office of the Secretary of this Territory.

SEC. 5. It shall be the duty of said acting commissioner to superintend in person the rearing and finishing of said buildings; and the said acting commissioner shall have power to call the said board of commissioners together for the purpose of transacting business on this subject; and the said commissioners shall receive such compensation as shall be hereafter allowed by law.

SEC. 6. The acting commissioner shall annually report to the Legislative Assembly a true account of all moneys received and paid out by him.

SEC. 7. If by death, resignation, or any other cause, there shall be a vacancy in said board of commissioners, it shall be the duty of the governor to appoint some person from the district where such vacancy occurred, to perform the duties of such disqualified commissioner: *Provided, however*, That such appointment shall not extend beyond the meeting of the next Legislative Assembly.

SEC. 8. *And be it further enacted*, That a penitentiary of sufficient capacity to receive, secure, and employ one hundred convicts, to be confined in separate cells at night, shall be erected at the place designated in the second section of this act, for the confinement and employment of persons sentenced to imprisonment and hard labor in the penitentiary of this Territory.

SEC. 9. That David H. Lounsdale, Hugh D. O'Bryant, and Lucius B. Hastings be, and are hereby, constituted a board of commissioners to superintend the erection of a penitentiary at the place designated in the second section of this act, and shall be governed by, and have all the powers, and be subject to all the restrictions contained in sections four, five, six, and seven of this act, and receive such compensation as may hereafter be allowed by law.

SEC. 10. This act to take effect and be in force from and after the passage of this act.

No. 2.

EXECUTIVE DEPARTMENT,
Oregon City, February 3, 1851.

Gentlemen of the Legislative Assembly:

Understanding that an act concerning the establishment of the seat of government for this Territory had passed your honorable body on the 1st instant, I sought for and obtained a copy of what purports to be a copy of the act; and, in the supposition that the paper furnished me is a true copy, I propose to submit to your consideration a few observations upon it.

The title is, "An act to provide for the selection of places for location and erection of public buildings of the Territory of Oregon."

The first section *establishes* the seat of government at Salem, in Marion county;

The second establishes the penitentiary at Portland, in Washington county; and,

The third section establishes the university at Marysville, in Benton county.

The fourth section names three gentlemen as commissioners to superintend the erection of the public buildings, and authorizes them to select one of their number as *acting* commissioner, who is required to give bond (without the usual requisition of security) to the United States in the sum of twenty thousand dollars, to be approved by the Governor, for the faithful performance of his duty; and upon this board is devolved the exclusive duty of erecting the public buildings.

The ninth section provides for the erection of the penitentiary in Portland, in the same manner and subject to the same restrictions prescribed

for the erection of the public buildings at Salem; but the act is silent as to the erection of the university at Marysville.

The act of Congress entitled "An act to establish the Territory of Oregon," approved August 14, 1848, provides, in the concluding part of the sixth section, that, "to avoid improper influences, which may result from intermixing, in one and the same act, such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

The concluding part of the fifteenth section of the same act, provides that, "and the sum of five thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said Territory of Oregon, to be there applied by the Governor to the erection of suitable buildings at the seat of government." It is also provided in the sixth section of the same act, that "any law or laws inconsistent with the provisions of this act, shall be utterly null and void."

The act of Congress entitled "An act to make further appropriations for public buildings in the Territories of Minnesota and Oregon," approved June 11th, 1850, provides in the first section, "That the sum of twenty thousand dollars each, be and the same is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to be applied by the Governors and Legislative Assemblies of the Territories of Minnesota and Oregon, at such place as they may select in said Territories for the erection of penitentiaries;" and the third section, "That the sum of twenty thousand dollars in addition to that appropriated by section fifteen of an act to establish the territorial government of Oregon, approved August 14, 1848, be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, to be applied by the Governor and Legislative Assembly of the Territory of Oregon, to the erection of suitable public buildings at the seat of government of said Territory."

I have carefully compared the paper which purports to be a copy of your enactment, with the above recited acts of Congress, and am constrained to say, with all due deference, that to my mind it is not in conformity with either, but in derogation with both. Every law should embrace "but one subject," and that "expressed in the title." The "*place*" selected for the penitentiary, should have the concurrence of the executive, and the money appropriated for the erection of the public buildings should be "*applied*" with his sanction.

Entertaining these views, I owe it to the government and people of the United States, whose agent I am; to the people of Oregon, whose rights it is my duty to protect, and to my official oath, to decline any participation in executing your act.

I have thus frankly expressed my views, in order that you may have an opportunity to substitute some other person to approve the bond of the acting commissioner, and to provide for filling vacancies in the boards of commissioners.

Allow me to add, in conclusion, my hope that you will not adjourn without taking the most effectual steps to carry out my recommendation in my message at the commencement of the session, to cause the public buildings to be erected.

I am, respectfully, your obedient servant,

JOHN P. GAINES.

No. 3.

OFFICE OF THE ATTORNEY GENERAL,
April 23, 1851.

SIR: The papers lately received from the Hon. John P. Gaines, which I communicated to you, and which you were pleased to refer to me for my opinion thereon, have been carefully examined and considered. They consist, first, of what purports to be an act of the Legislative Assembly of the Territory of Oregon; second, a message from Governor Gaines to that Assembly, bearing date February 3, 1851, expressing, for reasons given, his dissent to that act, and his refusal to participate in its execution; and, thirdly, an opinion of the United States attorney for that Territory, given on the application of the governor, against the validity of the said act.

The only acts of Congress which I have found relating to the subject are, "An act to establish the territorial government of Oregon," passed August 14, 1848, and "An act to make further appropriations for public buildings in the Territories of Minnesota and Oregon," passed June 11, 1850.

By the first of these acts, the legislative power and authority are vested in the Legislative Assembly of the Territory, consisting of a Council and House of Representatives, and the concurrence or approval of the governor is not requisite to the validity of their acts of legislation. The power "to locate and establish the seat of government for said Territory, at such place as they may deem eligible," is expressly given to that Assembly by the 15th section of that act.

It may be a question how far this general and exclusive power of legislation has been qualified by the act of Congress above-mentioned of the 11th of June, 1850, in the instances therein embraced. That act, in its first section, provides "that the sum of twenty thousand dollars each be, and the same is hereby, appropriated out of any money in the treasury not otherwise appropriated, to be applied by the governors and Legislative Assemblies of the Territories of Minnesota and Oregon, at such places as *they* may select in said Territories for the erection of penitentiaries;" and in its third section it further provides, "that the sum of twenty thousand dollars, &c., be, and the same is hereby, appropriated, &c., to be applied by the governor and Legislative Assembly of the Territory of Oregon to the erection of suitable public buildings at the seat of government of said Territory.

This last section does not in my opinion conflict or interfere with the previous exclusive power of the Assembly to "locate" their seat of government as they thought proper. It gives the governor no control or voice on that question. But the seat of government once fixed by the Assembly, it does give him a concurrent and equal authority with them in the application of the money to the purpose designated. This concurrence was required probably as an additional security for the proper expenditure and use of the money granted. And to this extent, and in reference to the use of this money, the legislative power of the Assembly is qualified, and they cannot dispose of it without the concurrence of the governor.

In regard to the first section of the act, and the appropriation of the twenty thousand dollars for the erection of a penitentiary in Oregon, the act is too explicit to leave any room for construction. That money, in the

words of the law, is to be applied "by the governor or Legislative Assembly of Oregon at such place as *they* may select for the erection of a penitentiary. By the force of this language, the governor must have a concurrent and equal power with the Assembly, not only in the application of the money to the erection of the necessary buildings, but in the selection of the place where they are to be erected.

On the other topics presented in the message of Governor Gaines, and in the written opinion of the United States attorney, it is unnecessary, perhaps, for me to say more than that I entirely concur in the views expressed by those gentlemen.

The act of Congress which established the territorial government of Oregon, and from which its Legislative Assembly derives its existence and its power, expressly and imperatively declares that "to avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, *every law* shall embrace but one object, and that shall be expressed in the title."

That the act of the Legislative Assembly in question does "embrace more than one object," and that it is, therefore, in violation of the act of Congress, is a proposition that cannot be made plainer by argument. The same act of Congress declares what shall be the consequence of such a violation of its provision, namely, that the territorial act "shall be utterly null and void."

My opinion, therefore, of the act in question is, that it is null and void in all its parts, and consequently, can give no legal validity to anything done under color of its authority.

This statement, with the message of the governor, the act of the Legislative Assembly, and the opinion of the attorney of the United States for the Territory, will present the subject fully, and enable you to give whatever direction may be deemed proper.

I shall be gratified if the remarks I have made shall in any degree facilitate your examination and decision of the subject.

I have the honor to be, very respectfully, sir, your obedient servant,

J. J. CRITTENDEN.

To the PRESIDENT.

No. 4.

United States supreme court for the Territory of Oregon.

AMOS M. SHORT *vs.* F. ERMATENGER. } In error from Clackamas county district court.

A. E. Wait, attorney for plaintiff; W. W. Chapman attorney for defendant.

On the question as to the proper place for holding the present term of the supreme court; the court decided as follows:

Associate Justice Strong's opinion.—The question before the court is one of grave importance. The decision upon the constitutionality of an important legislative act by a court of supreme jurisdiction is a serious

matter, and the court will at all times approach the investigation of a cause involving the necessity of such a decision with great caution. Yet it is a duty from which they are compelled, by the obligations of their oaths, not to shrink when it is legitimately brought before them in a cause between parties litigant. This case is also important from the fact, to which the court cannot close their eyes, that the question involved is one of absorbing interest to the entire population of the Territory. And well may it be so considered, for upon its proper determination by the court, and the peaceful acquiescence of the people at this time in such determination, depends, in a great degree, the destiny of this new and rapidly growing Territory. If, in our action as a people on this question, we exhibit a disposition to be governed by those principles of law which lie at the foundation of all our civil rights, and be governed in our action by the decision of that tribunal which has been constituted to decide upon them, all will be well. If, on the contrary, misled by partisan feeling, passion, prejudice, sectional or local interest, we trample law and order under foot, the consequences at this early period in our attempt at self-government as a Territory, may and certainly must be such as good men will look forward to with fearful apprehensions. It is only in times of great popular excitement that the people are liable to forget, and tempted to overstep those great fundamental principles in our government by which the power of the people is distributed and apportioned to the different departments, legislative, executive and judicial; and if we wish to preserve the free institutions under which as a people we have long been so highly prospered, it is at such times that we should be extremely cautious not to be led into rash and inconsiderate action. Our past history has shown that when the excitement is over, the people are sure to return to the good old ways of their fathers, which they have tried so long and love so well; but vastly more desirable is it to continue in the right path, than, having gone astray, to return—though to forsake an error when discovered, and correct our course, is an attribute characteristic of Americans, and of which we may well be proud. Had not objections been made in the cause now on trial before the court, which compel us to decide this point, that our decision, if the parties are not satisfied, may be made the subject of review by the appropriate tribunal, the court would have remained silent—our actual sitting and transacting business as a court, at Oregon city, being of itself a virtual decision; but the party requiring the decision upon this point, and being entitled to receive it, it is made. It is, however, in the view of the case that I have before presented, that I have felt called upon to give the subject my most serious attention—much more so than I would have deemed necessary had it been a matter involving simply dollars and cents in amount however large. I have given it such consideration; and it is a source of satisfaction to feel that the decision to which we have come is clear, both upon principle and authority—so clear, it seems to me, as to leave no cause for a reasonable doubt in the mind of any man who has his ordinary allowance of common sense and the disposition to use it fairly and honestly. Although purely a question of law, yet it is so plain to the comprehension of any man who examines it, that it requires a considerable effort of legal ingenuity to so far mystify, as to raise the shadow of a doubt. An objection is made to proceeding in the cause before the court, on the ground that we are not met at the proper place, or in other words, at the seat of govern-

ment. The simple question, then, presented to us at this time for our decision in this cause is, where is the seat of government for the Territory of Oregon? Is it at Oregon city? The first proposition to be determined is, what does the term "seat of government" mean? A concise but sufficiently comprehensive definition of the term is, that it is the place where the law-making power can legally assemble for the purpose of enacting laws. If the legislature can assemble at any place within the Territory, and there make legal and binding statutes, and that for this purpose one place is as good as another, then there is no seat of government, for there would be nothing settled about the place, and the very term implies stability or something settled. It must then mean some place, either permanent or temporary, where and where alone the members of the Legislative Assembly can meet and act in a legislative capacity. And where is that place in Oregon? The first inquiry which would suggest itself to a legal mind, or indeed to the mind of any man making investigation on such a query being propounned to him, would be, Where has the legislature heretofore met? The court is bound to take the official notice of the public acts of the legislature; and we find that the legislative body of the provisional government met at the Falls of the Willamette, at what is now Oregon city, and this they were required to do by an act passed June 27th, 1844. So far, then, as the provisional government is concerned, there can be no doubt where the seat of government was—it was fixed by law. This act had all the force of law which an act of the provisional government could have, until the passage of the organic act by Congress, August 14, 1848. By the 14th section of that act validity is given to all the laws of the provisional government then in force in Oregon Territory, excepting such as might be incompatible with the constitution of the United States, and the principles and provisions of the organic act. The law of the provisional government, then, fixing the seat of government, unless changed by some provision in the organic act, still continued in force after the Territory became organized under the law of Congress. The only provisions in the organic act affecting this question are, that by the 13th section the governor is authorized to name the place where the Legislative Assembly should hold its first session, thus conferring an authority upon the governor to make a temporary seat of government, which should be a legal place for the transaction of legislative business during that session. The governor, in the exercise of this power, saw fit to name the place where the seat of government had legally existed and did legally exist, until some new place was named by him. After the first session of the Legislative Assembly terminated, the power of the governor over that matter was at an end. It rested with the Legislative Assembly themselves. They adjourned at their first session without attempting to pass any act on this subject. What, then, was the condition of the Territory after such an adjournment? Had it no seat of government? Was there no place where the law-making power could legally assemble? If there was not, then the government was disorganized, the governor had no power to make a seat of government, and the law-making power could not act without first assembling at some lawful place. It would therefore have required an act of Congress to have again set the wheels of the territorial government in motion. But such a state of things could not and did not follow. Oregon city, or the Falls of the Willamette, had once been established the lawful seat of government,

and had never been legally changed; and by well established principles of law, it continues the lawful seat of government until it is lawfully changed. To hold any other doctrine, would be to hold that the last Legislative Assembly did not meet at any proper place, and consequently that they did not meet at all, and that all laws passed by them at their last session are but the idle resolutions and doings of a set of men met together without legal authority, trying their hands at law-making by way of pastime; and we are thrown back upon Congress for a new start. Such is not my opinion of the law. I must hold Oregon city to be the legal seat of government up to the meeting of the Legislative Assembly, or all is anarchy and confusion. We now progress a step further, and examine whether, by any law which was passed at that session, the seat of government was removed to any other place. The power of locating and establishing the seat of government, as well as of removing it when established, remains in the Legislative Assembly; and how may they do this? In the same manner that a legislative body may do any lawful act, that is, by the passage of a law. Did the Legislative Assembly at that session pass any law upon this subject? We find, upon looking at the statute book, what purports to be "An act to provide for the selection of places for location and erection of the public buildings of the Territory of Oregon," which provides—(see General Laws Oregon Territory, page 222.) In order to know whether this is a *law*, and therefore of binding force, or *not* law, and therefore of *no* force, it is necessary to examine the power of the Legislative Assembly; for unless it be the act of a body having the power to make it, it cannot have the force and effect of a law, though it might be written on every page of the statute book. Our legislative assemblies are not like the Parliament of Great Britain, supreme. We have no supreme power, save that which is vested in the people. In each of the States the people have seen fit to adopt a constitution or fundamental law, by which they establish three different departments of government: the legislative, executive and judicial; and assigned to them their respective powers, fixing limits over which none are to pass, and usually limiting the power which may be exercised by the body of the people, as a mass, to a revision of that fundamental law, under certain prescribed forms. The officers being the agents of the people, are authorized to exercise those powers only which are conferred upon them in the constitution. If the legislature, the executive, or the judiciary act within their power, their acts are the acts of the people who have authorized them, and therefore valid. If they step beyond their powers, their acts are void, because the people have not authorized them to act, and have not so agreed to be bound. The constitution, then, is the touchstone by which every act must be tried. Still further, and over and above all, is the constitution of the United States. Within the limits of its provisions, it is the expressed will of the people of all the States; and so far as it extends, it, and all laws enacted in accordance with its provisions, are the supreme law of the land, because it is the will of the entire people expressed in a manner agreed upon and prescribed by the entire people; and when we speak of the acts of Congress, we merely use a short form to speak of the acts of the entire people comprising all the citizens of the United States, whether residing in States or Territories. The subject of territorial government has been the subject of much discussion; and it has become the settled doctrine, that until they possess a sufficient population

to assume a State government, they are under the protection and government of the people of all the States, through their regularly constituted agents in Congress assembled. Acting upon these principles, from 1787 down to the present time, Congress has directed the government of the several Territories, generally to the satisfaction of all the people; and about half of the present States of the Union have gone into the Union from Territories. I allude to this peculiar position of our territorial government, for the purpose of showing that it is not a new thing, and that it is not an arbitrary and tyrannical species of government, as some seem to suppose, where we are subjects instead of citizens. We are here by our own consent, with a full knowledge of the usual mode in which Territories are governed; and, therefore, while we remain to enjoy the protection of Congress or of the whole people of the Union, and the benefits of a territorial form of government, we owe as willing an obedience to the organic act, and the laws prescribed by Congress, as we could possibly owe to the constitution of any State in which we might choose to take our residence. The people of Oregon, hitherto under the provisional government, and since the organization of the Territory, under the law of Congress, have shown a disposition to abide by the laws of their country, under circumstances the most trying; which I trust will continue to be manifested to the end of time. The act of Congress organizing the Territory of Oregon is our constitution. It is the fundamental law by which the different departments of government are created, and by which their powers are defined and limited, and must so remain until we become a State, or the power that made it shall change its provisions. The Legislative Assembly is made such by that act, and their duties are prescribed by its provisions, and with those provisions we compare its acts to determine their validity. Let us apply this test to the act in question, and if it stands the test it is good, and will come out the brighter for having been tried. If it fails, it is not the *law* and never has been. The organic law, section 6th, provides "that every law shall embrace but one object, and that shall be expressed in the title;" and in the same sentence it gives the reason for its enactment, which is, in the words of the law, "to avoid improper influences which may result from intermixing things having no proper relation to each other." It would seem that Congress had experienced the evils resulting from intermixing things having no proper relation to each other in one act, and were also aware of the deception which had frequently been practiced in legislation, by enacting provisions in the body of a law altogether different from the professions contained in the title, and that they were determined that, in this new Territory, every offspring of legislative enactment should not only stand upon its own merits, but should also come into the world with a responsible name, and thus a great door to log-rolling and fraud be effectually closed. In looking for an act locating or changing the seat of government, we should naturally look—knowing this provision of the laws of Congress—for some title expressive of this object. We look and find none. "The seat of government" is not even mentioned in the title of any act passed by the Legislative Assembly. We look still further, and under the modest and unassuming title of "An act to provide for the selection of places for location and erection of the public buildings of the Territory of Oregon, (General Laws, page 222,) we find an act containing ten sections; the first section professes to locate and establish the seat of

government, and instruct future Legislative Assemblies where to meet; the second section locates the penitentiary at a different place, in a different county from the seat of government: the third section locates and establishes a university at a different place, in a different county from either the seat of government or penitentiary, and appropriates the funds granted by Congress for the endowment of a university to the erection of buildings, &c. The remaining sections contain miscellaneous provisions referring to the first three sections. It is evident that the location of the seat of government, and instruction to Legislative Assemblies, are not public buildings; and it cannot for a moment be contended that the penitentiary or university have any necessary relations to each other or to the seat of government, especially when those buildings are to be erected in different places, and neither of them at the seat of government; and it would be a difficult matter to convince any man of natural abilities, that the proper way to express in the title the subject matter of a law to change the seat of government, was to use the language adopted in the title to this act. We have yet to learn of the first one who considers the act as in accordance with the organic law. Any one, upon reading the law, would infer that there was a studied design running through the whole of that act, to see how many provisions of the organic law could be violated in so limited a space, and that the title is a labored effort to express as little as possible of what is explained in the body of the bill. Every one of those objects is of sufficient importance to be the subject of a separate act; and the conclusion is almost irresistible that there must have been some improper influences at work, to have intermixed them in one and the same act. Under the organic law the people have the right to demand separate action upon every object that is brought before the Legislative Assembly, that each act may stand upon its own merits; and they have a right to demand that the object of every act shall be expressed in its title, that they may know by the titles of the different acts, as they appear in the published reports of the proceedings, what laws are under consideration on the part of those they have sent to legislate for their interest. The court would be unworthy its position should it deny them this invaluable right. Congress, as if to avoid the necessity of any reasoning in regard to the effect of an act contrary to the organic act or territorial constitution, has, in so many words, declared that "it shall be utterly null and void." (Sec. 6, organic act.) Can stronger language be used? Can an act utterly null and void have any force and effect? Is it not dead, still-born, incapable even of resurrection? The matter is too plain for argument. It is no law. No man, be he officer or citizen, is bound to pay it the least respect. It is dead, without mourners, and can lie unburied without offence. Every one is bound to disregard it. Notwithstanding the law is conceded to be void, it is argued that every act of the Legislative Assembly upon a subject matter within its jurisdiction, is presumptively valid, and that courts and individuals are bound so to treat it, until declared by a legal tribunal—that a sort of judicial coroner's inquest must sit over the dead law, to give its solemn decision that the thing is absolutely defunct. If the mere statement of the proposition shows its absurdity, a thorough examination will show it still more clearly. If the Legislative Assembly should charter a bank, it is conceded that the act is binding upon no one, because the subject matter of chartering a bank is not within their jurisdiction. But it is said that if

they should establish the seat of government, by an act which is passed in a manner contrary to the provisions of the organic act, such a law would be binding until it is pronounced void by a court, because the subject matter of locating the seat of government is a matter within their jurisdiction. The term jurisdiction, as applied in this sense, to a legislative body having no judicial power, is entirely misapplied. It can possibly have no such legal application. Neither of the acts are good or bad, because they are within or beyond the jurisdiction of the Legislative Assembly, but both are void, and in precisely the same sense and to the same extent worthless, and entirely to be disregarded, and for the same reason in each case, namely, the want of power in the Legislative Assembly to pass them. The Legislative Assembly cannot charter a bank, because they are prohibited from so doing in the organic act; and they cannot pass a law fixing the seat of government, and providing for other objects in the same bill, with a title that does not express the object of the act, because such legislation is also prohibited in the organic act. The same sentence is passed alike on both. They are utterly *null and void*. It is further claimed that when the Legislative Assembly have passed an act similar to the one in question, it is presumptively valid, and every one must believe it to be a good law, and act under and upon it as a good law, until the courts have pronounced it void, and that the judges of the courts must walk according to its provisions, and assemble at the place pointed out before they can sit upon the question and pronounce as to its validity. Such is not the doctrine of the American law, or of any law that prevails in any free country. Every freeman has a right to judge of the law himself; if he judges it to be good, to obey it; if bad, to disregard it—responsible for his conduct to the judgment of that tribunal who, by the people's appointment, in their constitution, are authorized to declare in the name of the people what is law with judicial authority. Judges, when not acting in an official capacity, have the same right of obeying a valid law and disregarding a void law. In regard to a law of this kind, where the very place of meeting for the purpose of holding court is the matter in question—and they cannot meet without virtually deciding the question—the act of each judge, in proceeding to the seat of justice, is, in a measure, an official act, which he is under an oath to perform, according to a law that is binding, and not according to a void act; and the action of a majority of the court upon that point may, with great propriety, from the very necessity of the case, be considered a judicial determination by the court of the question. But what is meant by a law presumptively valid? If it is meant that the court will enter upon the consideration of every law or act passed by the Legislative Assembly, with a disposition to consider it good unless the contrary is manifest, presuming that the legislature will exercise due care in enacting laws that are good, then I agree with the doctrine. But if presumptively valid means what it seems to be used for, namely, that void acts passed by a Legislative Assembly have a sort of *prima facie* validity that it requires action to overthrow, then it is not used in any sense warranted by legal authority. A void act is of no force upon any one. Action by a court may declare it so; but it was just as lifeless and inoperative before the declaration by the court as after. It is a well established principle of law, as well as common sense, that you cannot kill a dead thing so as to render it more lifeless. If this doctrine of presumptive validity is correct, and every man is bound to

act upon a law as valid until it is decided invalid by a court—suppose a legislature having jurisdiction of the subject-matter of crimes and punishments, should pass a law making the killing of a hog punishable by death, and commanding every man who saw the offence committed to shoot down the offender without judge or jury, the subject-matter of crimes is within the jurisdiction of the legislature, and they have a right to punish hog-killing with death. To be sure, there is a little informality in the mode of execution and depriving an American citizen of the right of trial by jury; but what of that? the law is presumptively valid, no court has said it was not so, and it must be obeyed. What would be the effect if the law-obeying citizen was brought up charged with murder, and tried by a court where justice was administered according to law? I opine that such an excuse would only avail on the plea of insanity. But the case in question shows the utter absurdity of this doctrine of presumptive validity about as clearly as any case that we can suppose. Had the members of the court gone to Salem, entertaining their present opinion of the law, they must have pronounced that the law was void and never had any force or validity. The question would then rise to the mind of every one, is the law so unreasonable and absurd as to require the judges to come so far from the place where the law compelled them to assemble, merely for the purpose of declaring that they were in the wrong place, which they knew very well before? Such a construction cannot be correct. The last argument I shall notice, if argument it may be called, is rather an affectionate appeal to the sympathy of the court. It is said that very many members of the legislature have been befogged by the law on their road to the seat of government, and are huddled together in some improper place where they have made up their minds to remain, unless the supreme court shall go to that place and officially and judicially shed light upon their pathway, which will enable them to see their way clear to the seat of government, and that we ought to go there by way to compromise, and enable those who have come to such a determination to retreat with honor. An act like this on the part of the members of the court, would be a void act, not having the force of a legal decision, and would, in effect, be placing upon the records the fact that the judges knew that they were not acting according to law. Personally, I should very much desire to gratify the feelings of any such, if any there are, but the obligations of an official oath to act according to law, forbids a court to be governed by mere questions of feeling or expediency, and we must do our duty, leaving to others to act as they shall answer to the people, whose agents we all are.

The entire want of time to refer particularly to all the authorities which go to support the position I have taken, compel me to omit that branch of the case, which I do cheerfully, knowing that his honor the Chief Justice is entirely competent to show that our decision is as clear upon authority as I deem it upon principle. I have said thus much, and said it plainly, because upon a question of this importance I desire not to be misunderstood, and I deemed it my duty. It is my opinion that Oregon city is at this time the legal seat of government, and the only place where the supreme court can legally convene, and that therefore the application to suspend proceedings in this cause must be refused.

Chief Justice Nelson's opinion.

The supreme court of Oregon Territory is required to hold a term on the first Monday of December in each year, at the seat of government, and the question is now raised,

Where is the seat of government?

Under the act of Congress organizing the Territory, the Governor appointed Oregon city as the place where the Legislative Assembly was required to hold its first session.

By the fifteenth section of that act, the Assembly, at its first session, or as soon *thereafter as it should deem expedient*, was empowered to locate and establish the seat of government for the Territory at such place as it should deem eligible. The Assembly at its first session, adjourned without fixing any time or place for its next session. Shortly afterward an extra session of the legislature was held at Oregon city, pursuant to a call of the Governor, in May, 1850. This body passed a joint resolution in these words: "*Resolved*, That the Legislative Assembly will meet on the first Monday of December next."

The last legislature assembled on the first Monday of December, 1850, at Oregon city. A short time previous to its adjournment, and on the 7th day of February, 1851, a resolution passed both houses, in these words: "*Resolved by the Council, the House concurring therein*, That the Legislative Assembly of Oregon Territory will meet annually on the first Monday of December in each year, at the seat of government."

Now, the seat of government is the place where the legislative body may lawfully assemble and enact its laws. I am of the opinion, therefore, that a fair construction of the language used by Congress in the fifteenth section of the act referred to, joined to the action of the legislature itself, requires us, in the absence of any proper legislation by the Territory, to regard the seat of government as continuing at Oregon city. The language used by Congress is by no means explicit, but any other interpretation of it would leave the legislature without any place fixed by law for holding its session, unless resort should be had to the law of the provisional government on the subject.

The fourteenth section of the act of Congress, organizing the Territory, contains a provision in these words: "And the existing laws now in force in the Territory of Oregon, under the authority of the provisional government, established by the people thereof, shall continue to be valid and operative therein so far as the same be not incompatible with the constitution of the United States, and the principles and provisions of this act, subject," &c.

By the law of the provisional government, the legislative body was required to meet at the Willamette falls, now Oregon city; so that whether we fall back upon the law of the provisional government, or repose upon the act of Congress, and the course of action pursued by the territorial legislature under the same, Oregon city must be considered as the seat of government, unless by some legal enactment it has been fixed at some other place.

The Legislative Assembly at its last session, passed an "Act to provide for the selection of places for location and erection of the public buildings

of the Territory of Oregon." This act is composed of ten sections; the first of which locates and establishes the seat of government at Salem; the second locates and establishes the penitentiary at Portland; and the third locates and establishes the university at Marysville, and declares that the property granted to the Territory for the establishment of a university shall be applied to the erection of suitable buildings at that place. The other sections of the act relate to the appointment of commissioners to superintend the erection of the buildings at Salem and Portland, regulate their official duties and provide for vacancies occurring in the offices. If this enactment has been rightfully made, then the assembly, in pursuance of the power conferred upon them by Congress, has changed the seat of government from Oregon city to Salem. But the validity of this act is questioned, as being repugnant to the act of Congress establishing the territorial government. Was this act, then, passed by the Assembly in the legitimate exercise of the powers granted to it and in the mode prescribed by Congress? In order to answer this question, we must refer to the law of Congress passed on the 14th day of August, 1848, establishing the territorial government of Oregon. This is the fundamental law of the Territory. By it the different departments of the government, executive, legislative, and judicial are created and their respective powers limited and defined; it holds substantially the same place in the regulation of affairs of the Territory, that a constitution does in a State. Neither of the departments can assume greater powers, nor exercise those powers in any other way than the supreme law, either in terms or by necessary implication, allows. Any attempt to do so would be an act of usurpation; if we should hold otherwise, we should be saying, in effect, that the agent is superior to the principal, and has a right to destroy the foundation on which his own power rests. A course of action in accordance with such views, would be revolution. The organic act gives to the Assembly the right to legislate upon all rightful subjects of legislation not inconsistent with the constitution and laws of the United States, in the mode subject to the conditions and with the exceptions provided for in section sixth. That section is in the following words: "And be it further enacted, that the legislative power of the Territory shall extend to all rightful subjects of legislation, not inconsistent with the constitution and laws of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect. *Provided*, That nothing in this act shall be construed to give power to incorporate a bank or any institution with banking powers, or to borrow money in the name of the Territory or to pledge the faith of the people of the same for any loan whatever, either directly or indirectly. No charter granting any privilege of making, issuing, or putting into circulation any notes or bills, in the likeness of bank notes, or any bonds, scrip, drafts, bills of exchange, or obligations, or granting any other banking powers or privileges, shall be passed by the Legislative Assembly. Nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said Territory, nor shall said Legislative Assembly authorize the issue of any obligation, scrip, or evidence of debt by said Territory, in any mode or manner whatever,

except certificates for services to said Territory; and all such laws, any law or laws inconsistent with the provisions of this act, shall be utterly null and void, and all taxes shall be equal and uniform, and no distinction shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title." It will be perceived from this section, that there are certain subjects upon which the territorial legislation is expressly forbidden to act. The consequence of doing so is declared in the act itself: "any law or laws inconsistent with the provisions of this act shall be utterly null and void." Again, all legislation must be in conformity with the rule which requires every act to embrace but one object, and that to be expressed in the title, otherwise it would be inconsistent with the law, and therefore according to the declared will of Congress, utterly null and void; even if the Legislative Assembly should pass a law in relation to a subject over which they have jurisdiction, or should in their action observe every direction prescribed by Congress, it is still subject to be disapproved of by Congress, in which event it would become null and void from the time it was disapproved of. But an act of the territorial legislature, either in relation to a subject over which Congress has given it no power to legislate, or passed without an observance of the rules prescribed in the act, requires no disapproval of Congress to strike it with death; it can never, owing to its repugnance to the supreme law, have any vitality; it is, if I may so speak, repealed beforehand; it is entitled to no more obedience nor respect than is an act of the Legislative Assembly rightfully passed after it is disapproved of by Congress. Chief Justice Marshall, in the fourth volume of the Commissioner's Report of Supreme Court of the United States, remarks: "When repugnancy exists, the authority which is supreme must control, and not yield to that over which it is supreme. A law absolutely repugnant to another, as entirely repeals that other as if express terms of repeal were used." In each case the act becomes null and void, or of no effect. Void things are no things —null means of no binding force or validity. An act that is null and void is, in its legal signification, precisely the same as if it had never been passed, and is of no more obligation than if all traces of it were expunged from the records of the body that passed it, than if it were a blank upon the statute book. Does the act of the Legislative Assembly contravene the law of Congress, as contained in the section before quoted? It is at all times a delicate task for the judiciary to call in question the validity of the acts of one of the co-ordinate powers of government. It is, however, their duty to declare what the law is, when the question fairly arises, from which neither their oaths nor their regard for the true interests of the people will permit them to shrink. If the question is doubtful, every presumption is to be indulged in favor of the virtue or validity of the act; but if it be made clearly to appear that the legislature has transgressed its powers, or has failed to observe the requisites of a paramount law, no alternative is left to the court but to decide its acts to be void. Entertaining the most unfeigned respect for the body that passed this act, I am constrained to say, that, in my judgment, the act was passed in violation of the law of Congress, and therefore has no force, and is entitled to no observance.

Without noticing other objections, the act clearly embraces at least three different objects, viz: the seat of government, the penitentiary, and the university; it is equally within the letter and within the mischief of the law of Congress sought to be prevented. The whole act is therefore a nullity. It has been stated, however, that every act of the legislature should be observed and obeyed until it is set aside by the court. How an act that has no more force than so much blank paper can require any observance, it is difficult to comprehend. But the court has no power *to set aside* any law. That is a legislative function—it is the province of the court simply to declare what the law is; if a question arises as to the validity of an act of the legislature, the power to settle it is lodged in the judiciary, and if that body should hold it to be void, any thing done under it would be void, not because the court sets aside, but because according to the decision of the tribunal appointed to determine the question, it never had any binding force as a law. A void act is none the more void because the court has so judicially determined; the court does not make the law void, it only settles the question and removes the uncertainty.

But let us see to what consequences this novel and extraordinary doctrine, that a void act deserves obedience until set aside by the court, will lead us. If it deserves respect and obedience, it is just as much a violation of duty to resist it through the channels of the courts, as it is to resist it any other way. That is one mode only of opposing it, and all opposition to it according to this theory is wrong, until the courts have made an adjudication. In such a case, how will the court ever be called upon to decide the question? It never adjudicates upon the validity of a legislative act, unless in some suit or judicial proceeding it is sought to be enforced on the one side and resisted on the other. Obey the illegal statute, say the advocates of this doctrine, in effect, until the court adjudge it to be void; and yet the course recommended will forever prevent an adjudication from being made. If this principle be correct, the consequences will inevitably ensue that unauthorized enactments will always have the effect of unquestionable laws, and the legislature becomes omnipotent. What security exists, then, for the liberty of the citizen when all power is consolidated in one body?

But if the court should arrogate to itself the right of sitting in review upon the proceedings of the legislature, and should assume, without any question arising before it, to pronounce upon the legality or illegality of its proceedings, the evil of the doctrine would not be obviated. The property of the citizen might be stripped from him by an unconstitutional act, and scattered to the four quarters of the globe before the time arrives for the court to assemble. His life even, before a term could be held, might be taken away under the direction of an act in palpable violation of the supreme law; and yet it is his duty, if this doctrine be correct, to yield up the sacrifice. Obedience to the law until it is set aside by the court is the dogma. Such a position, I apprehend, is utterly indefensible upon any sound view of law or upon any principle of common sense. Where there is no right on the part of a legislature to pass a law, there can exist no duty on the citizens' part to observe it, otherwise he is bound to respect usurpation. The authorities to sustain these positions, if any are necessary in a case so palpable to the reason, are numerous and most explicit. In the case of Charles river bridge *vs.* Warren bridge, 7 Pick. Rep. 441, Morton,

judge, says: "Legislators act by delegated authority, and only as agents of the people. The constitution contains the grant of their power: if they exercise any not contained in this instrument, it is usurpation; any such acts are void, for the want of authority to make or pass them." Again, on page 458–9, he says: "The supreme law of the land expressly and peremptorily interdicts the legislatures of the several States from passing any law impairing the obligation of contracts. Any legislative act, assuming the form of law, having this effect, is a nullity and a blank upon the statute book." And further on, in the same case, he observes, in respect to the act then under discussion: "Upon its constitutionality we are bound to decide. If it clearly contravenes any constitutional provision, our duty is plain—the act is a nullity." In the case of Kimberly *vs.* Ely, which arose in Massachusetts, Parker, chief justice, remarks: "It has been urged that the proceedings are not void but voidable, and therefore may become valid by the consent or ratification of the party whose interests are affected; but an act of the legislature, which it has no constitutional right or power to pass, is a nullity, and all proceedings under it are void." In 3d McLean's reports, page 107, it is laid down that unconstitutional law can afford a justification to no one. In the case of Rice *vs.* Foster, 4th Harrington's reports, page 603, Judge Harrington, in speakiug of an act of the legislature obnoxious to the constitution, says: "The delegation of such power is unauthorized and invalid, and the execution of it is not an act of legislation but of usurpation, which the citizen is not obliged and the other departments of government are not at liberty to obey." In the same case, page 506, the Chancellor of Maryland observes: "In like manner the action of the legislative powers, when exercised in order to produce a valid law, must be in accordance with the mode of action prescribed in the constitution, otherwise the result cannot be pursuant to the agreement as contained in the social compact, and therefore not obligatory on the citizen." In the case of Baily *vs.* Railroad Company, 4th Harr. page 414, Houston, judge, says: "No one will contend, I presume, that if the legislature should pass an unconstitutional act, the people of the State would be bound to obey it." The case of Prigg *vs.* Commonwealth of Pennsylvania, 16 Peters's Supreme Court Rep. U. S., page 539, bears with direct application on this matter. After an attentive examination, I cannot conceive how any further room is left to doubt as to the matter in question. The supremacy of the tribunal that decided it, joined to the exalted character of the judges, and the profound consideration given to the case by the court, entitles its doctrines to instant and cordial acquiescence. The case was thus: Prigg, a citizen of Maryland, was indicted in a criminal court of Pennsylvania for having forcibly taken and carried away from that State, contrary to the statutes of Pennsylvania, a negro slave, who had escaped from Maryland, and who, by the laws of Maryland, belonged to a citizen of Maryland who had duly appointed Prigg agent to recover the slave. The acts and doings of Prigg were in plain violation of the statutes of Pennsylvania, but he utterly disregarded them on the ground that they conflicted with the constitution of the United States. The State courts gave judgment against Prigg, and he carried the matter to the supreme court of the United States for review. That august tribunal, after most thorough, searching, and eloquent arguments of distinguished counsel, unanimously reversed the judgment of the State courts, and thus, in effect,

decided that Prigg's open disobedience and disregard of a plain statute of the Pennsylvania legislature, was right and legal, because the statute was void. Chief Justice Taney in that case, in speaking of the right of the master to arrest his fugitive slave, remarks: "He has a right peaceably to take possession of him, and carry him away without any certificate or warrant from the judge of the district or circuit court of the United States; and whoever resists or obstructs him is a wrong doer, and" (mark the words) "every State law which proposes directly or indirectly to authorize such resistance or obstruction, is null and void, and affords no justification to the individual or officer of the State who acts under it."

Judge McLean, in the opinion given by him in the case, observes: "If the master may lawfully seize and remove the fugitive out of the State where he may be found, without an exhibition of his claim, he may lawfully resist any force, physical or legal, which the State or citizens of the State may interpose. To hold that he must exhibit his claim in case of resistance, is to abandon the ground assumed. He is engaged, it is said, in the lawful prosecution of a constitutional right. All resistance, then, by whomsoever made, or in whatsoever form, must be illegal. Under such circumstances, the master needs no proof of his claim, though he might stand in need of greater physical power. Having appealed to this power, he has only to collect a sufficient force to put down all resistance and attain his object. Having done this, he not only stands acquitted and justified, but he has recourse for any injury he may have received in overcoming the resistance. If this be a constitutional remedy, it may not always be a peaceable one. But if it be a rightful remedy, that it may be carried to this extent no one can deny." Again, in speaking of the master's claim, he says: "His right is guaranteed by the constitution, and the most summary means for its enforcement is found in the act of Congress, and neither the State nor its citizens can obstruct the prosecution of the right."

Now, two reflections may be made upon this case. If Prigg was justified in disregarding an unconstitutional statute of Pennsylvania, the justification would extend to all the citizens of the State if they had disregarded it. There existed, then, no duty on the part of any citizen to respect the act.

Second. If the State legislature obstructs or interferes with a right given by the superior law, and the citizen may and should utterly disregard their action, then if the subordinate body attempts to exercise powers which are denied to it by the paramount law, it is equally the privilege and duty of every one to give to their illegal doings no countenance nor respect.

Apply these principles to the case in hand, and they seem to me decisive of the question.

But, again, it has been said, that inasmuch as the Legislative Assembly had the right to act upon the subject matter of the act, it is to be presumed good, and that it is the duty of the court to go to Salem and there, if it be vicious, pronounce it bad; it is true that we are not to suppose, without clear evidence to the contrary, that the legislature has transgressed its powers. We are to presume every thing in favor of the correctness of its acts; but if, upon comparison of its doings with the law under which it derives its powers, we discover a failure to conform to the will of its superior, it is the duty of the court to declare the mandate of the law. Now, how

are we to ascertain that the Legislative Assembly had jurisdiction of the subject matter? We shall be answered by an examination of the act of Congress. But does not the same act of Congress require every law to embrace but one object, and that to be expressed in the title? It will thus be seen that whilst we are looking for the source of the Assembly's power to legislate, we at the same time discover a provision that kills the act. The Assembly has no more right to pass a law that embraces more than one object, than it has to legislate upon a subject on which it is forbidden to act. Two things are required to be observed in all legislation by the Assemby: first, it must have power over the subject matter; second, each act must embrace but one object, and that must be expressed in the title. Disregard of either of these rules, renders its doings null and void. But if the court shall go to Salem, and there, as a court, decide that Salem was not the seat of government, it would, in effect, convict itself of a violation of the law. And even if it was not unlawful for it to do so, what good purpose could it serve if it should proceed there—it would be a mere piece of useless formality, and the law never requires an idle ceremony. It has been alleged that unless the court meets at Salem, and there decides upon the question, its decision given elsewhere can have no force, for the reason that it would be simply an opinion of individuals holding, it is true, official stations, but not being assembled pursuant to law, it cannot be considered as a judgment of the court. This is a petitio principie; but if the judges should go to Salem, and there decide upon the question, and the decision should be against the law, would not the decision be that of individuals and not of the court? Because, by their own declarations, they were not sitting at the place prescribed by law. The question as to the proper place to pass upon the act of the Assembly is as much a judicial question as that of the validity or invalidity of the act itself; and when a sufficient number of the judges constituting the court are convened together at the proper time, and at what they deem the proper place for holding a term, and proceed to do business as a court, the question is, by necessary implication, decided and must be regarded as settled until their doings are pronounced erroneous by the tribunal having the power to review them. But we are told, that as a matter of expediency, as an indication of respect to one of the co-ordinate departments of the government, we ought, in the first place, go to Salem, even if the act of the Assembly contravenes the law of Congress. I entertain as sincere a respect for the Assembly as any other individual; I regret the necessity which calls in question any of its proceedings; but if respect is due any where, it is first due to Congress. When its will is made known to us we should yield to it every deference and obedience in preference to any act of the territorial legislature that may be in conflict with it. We cannot serve two opposing masters. Whilst proper deference is to be shown to every one in matters of this kind, mere compliments are out of the question. Courts are not to sacrifice duty to etiquette. They are bound to follow the law and not expediency. A judge would be unworthy of his place on the bench if he should suffer any notions of false politeness or temporary expediency to bind his opinions or influence his conduct from the straight line of duty. And who is there so vain as to suppose that the present Assembly is weak enough to be flattered by a compliment so hollow as that proposed to be paid by the body that framed this act. Will it be better satisfied to have the law pronounced

invalid at Salem, rather than at Oregon city? Is there any magic in the place where such opinion shall be given? If any of its acts are to be declared void by judicial determination, I entertain too high an opinion of the good sense of the members of that body to suppose that the effect of the judgment of the court is to be rendered less unpalatable to them by reason of the locality where it is pronounced. I for one will never demean them so far as to suppose that they are to be

"Pleased with a rattle, and tickled with a straw."

I have thus freely expressed my views on this question, not because it involves, in my judgment, any serious difficulty, but because the principle at stake is one of high importance. It is, perhaps, well that the discussion of it has taken place at this period in the history of this young nation. We cannot expect that men will be wholly uninfluenced by their local interests and feelings, but I cannot but think that in a matter affecting so deeply the character and interests of the Territory, there will be found enough of good sense and patriotism pervading all the citizens of this Territory, whether in public or private station, to uphold with a steady hand, regardless of all minor considerations, the law of the land as settled by the authoritative tribunal.

The objections must be overruled.

No. 5.

Correspondence between Judge Pratt, one of the associate justices of the supreme court, and Hon. Samuel Parker, President of the Council for Oregon Territory.

SALEM, MARION COUNTY, O. T.,
December 12, 1851.

DEAR SIR: Learning that you are again at the seat of government, after a short absence, I called at your quarters to see you, but being told that you were out, and most likely would stay away all the evening, I will not wait your return, and in place of it take the liberty to address you a note. The object of my visit is to see and inquire of you whether you at any time heretofore, or do now entertain a doubt about the legality of an assemblage of the Legislative Assembly at this place and their power to legislate after being thus assembled? Since I last saw you Judges Nelson and Strong have held what they call a supreme court, at Oregon city, and denounced in unmeasured terms the action of the people's representatives as disorganizing and revolutionary, because they have assembled at Salem to do their public duties in obedience to the location law passed at the last session of the Legislative Assembly. This sounds strangely to us, but we are prepared for almost anything after what has transpired in certain quarters during the last twelve months. It looks a good deal like a party struggle to sustain the governor, who has kept the Capital and public library away from us, in defiance of all law, for a whole year. What think you?

Please answer this note without delay, and oblige yours, truly,

SAMUEL PARKER.

Hon. O. C. PRATT.

SALEM, *December* 15, 1851.

DEAR SIR: In answer to your inquiry "whether I, at any time heretofore, or do now entertain a doubt about the legality of an assemblage of the Legislative Assembly at this place, and their power to legislate after being thus assembled," I take occasion to answer and say, that at all times since reading the "location act" of last winter, (and now no less than ever,) I have never doubted the legal necessity and official obligation imposed by it on members of the Legislative Assembly to assemble at Salem, which, by that act, was made the seat of government, and of their doing such business in the way of legislation as may be found necessary to meet the wants of the Territory. And I further conceive that this necessity and obligation will continue binding until the law is either *disapproved* by Congress, *repealed* by the Legislative Assembly, or declared *unconstitutional* by a court lawfully organized *and invested with power to adjudge its invalidity*. After which, should either of such events occur, I do not doubt the Legislative Assembly, not being prevented by the organic law nor any statute, would then be at liberty until the Capital is again established, to assemble and do business by common consent at any other place which might be selected. I am clearly of opinion, however, and have always thought the same since entering upon my duties here three years ago, that the supreme court can only be holden at the "seat of government," as expressly stated in the law of Congress organizing the Territory, and *that* place is *not* Oregon city, for the reason for what should be the seat of government was left to be established by the Legislative Assembly at its first or any subsequent session; and it is not pretended that any law or act has ever been passed by that body conferring upon it such character or distinction. The only apology offered in support of such assumption is: *first*, that it was the Capital of the provisional government, and made so by a resolution bearing date June 27, 1844, when, in fact, that government was only adopted July 26, 1845, and the "seat of government for Oregon Territory," under the laws of which we now live, was provided for by an act of Congress dated August 14, 1848. The provisions of the latter are not only inconsistent with, but absolutely repugnant to, all previous temporary and provisional legislation on the subject! The words in the organic law, "*shall proceed to locate and establish* the seat of government, directed by Congress to the Legislative Assembly while assembled as such, at their first or any subsequent session, *clash* strangely with the idea thrown out "that the *act of assembling makes and establishes it*," nolens volens. To say of a thing *already done* that we may PROCEED to do it, is an absurdity. And for Congress to provide for the first session of the Legislative Assembly by directing the governor to call them at *any* place *he* may choose, and then permit that body to establish the seat of government wherever they may deem most eligible, and after which let the judgment of a court on this congressional *law* and the *fact* of assembling pronounce that the seat of government is, ipso facto, fixed at that place of *involuntarily assembling*, or by a subsequent act of assembling at the same spot through *common consent*, would constitute a system of reasoning that may answer the purposes of others, but not for me. Such *construction* Congress would hardly thank us for, inasmuch as thereby *their meaning would be perverted*, and as far as our feeble reasoning carried weight, that body *would be stultified*. No, sir, that sort of theory will not do. It does violence to the commonest understanding, and it re-

quires neither astuteness nor learning to divest it even of plausibility. Every body understands that the seat of government, under the organic law, *cannot be fixed by implication*, and if it has *not* been established by the law of the last Legislative Assembly, as my brethren saw fit to pre-judge by utterly disregarding it, why then, it simply amounts to this, *that it remains still to be done*, and as a consequence, the gentlemen commissioned as our judges must *suspend the exercise of their functions as a supreme court* until the legislature "*proceeds to locate*" *a place for them to sit* "at the seat of government." But has not this been done? An unrepealed and unadjudged statute, passed February 1, 1851, by the Legislative Assembly, answers that it *has*. But my brethren say "it is no law;" no man, be he officer or citizen, is bound to pay it the least respect. It is dead without mourners, and can lie unburied without offence. This, certainly, is not very complimentary to a co-ordinate department of the government; but then, as a set-off, it contains a spice of brilliant and poetic beauty rarely found in legal papers, coming from a tribunal which Chancellor Kent describes as peculiarly fitted to sit in judgment upon and weigh the constitutionality of statutes: *venerable* by age and gravity, *wise* through ripe learning and long experience, *dispassionate* by means of being removed from the influences of excitements and popular passions, and *greatly respected* from their rigid simplicity and absence of all irregular fancies and poetical flights in measuring out the stern mandates of the law." But all this is not worth while to differ about. Attempts at wit and ridicule are thought by some to be more appropriate for the husting than the bench, but *failures* of that kind, wheresoever they may occur, all agree, wound only the user. Let us now look at this law so flippantly and unceremoniously disposed of by the (extra) judicial action of Judges Strong and Nelson. It is entitled "An act to provide for the selection of places for location and erection of the public buildings of the Territory of Oregon." Its first section provides for locating and erecting the State-house at Salem, and declares it the "seat of government." The other sections relate to two other public buildings, and gives details connected with their erection. Whether any of the sections after the first refer to a building (the penitentiary) which could only be located by concurrent action of the Legislative Assembly and the governor, and therefore void for want of full power to enact, is *immaterial to our inquiry*, inasmuch as if it be so, they may be rejected whenever found subject to this defect, and the balance retained—it being a well-settled principle that statutes may be bad in part and good in part, and the courts have power to *reject* the one and *enforce* the other, so that we are unembarrassed on that score. This first section says that Salem, where the State-house is ordered to be built, shall be the seat of government. There is no objection to it on account of *want of clearness* expressive of the legislative will, *or of jurisdiction as to the subject-matter;* but it is thought that the *manner* prescribed in the law of Congress to the Legislative Assembly "that every law shall have but one object, and that shall be expressed in the title," was not properly regarded in drawing up or framing this location act. With all due deference to others who proclaim the contrary, allow me to say that I regard an act of the legislature, like the one in question, where jurisdiction to legislate, so far from being inhibited is *expressly conferred*, as being neither within the letter or spirit of that declaration of the organic law, which declares certain laws and parts

of laws "absolutely null and void." Those words immediately *follow, and are intended only to apply to attempts at legislation where Congress for good reasons withholds jurisdiction and denies all power over certain matters, such as chartering banks, and the like, to the Legislative Assembly.* Statutes in derogation of common right, are to be construed with strictness and not extend beyond their express words and clear import. In fact, that expression saying that certain laws would be absolutely null and void is only declaratory of the rule of law long settled by the courts, "that laws passed where there is an interdiction of power to pass them, are nullities, and bind nobody." The congressional intention, most likely, in stating *and setting it out* in the organic law was, to simply let the legislature know in advance what would be the judgment of the law in all such cases of prohibited legislation. The act in question may, nevertheless, be voidable on account of some defect in the mode of its enactment. There is a wide distinction however between a void act and one merely voidable; the *former* is a nullity from the moment of its passage, but the *latter*, in legal parlance, is presumptively valid until it is avoided by the judgment or decree of a proper court when the question is brought up for adjudication. Statutes, thought by some to be voidable, like the location act, are always *operative* and should be *officially recognised until a judgment furnishing evidence of invalidity is legally pronounced.* That part of the law of Congress contained in the closing paragraph of the sixth section, relating to the manner of enacting laws by the Legislative Assembly, is, as similar clauses have repeatedly been, adjudged by courts of unquestioned great eminence in several States, *directory* merely; and even if entirely unheeded, by no means renders an act or law *ipse facto* void. For this latter quality only attaches in cases and to acts where there is a total absence of power.

Disregarding the particular form of words directed to be used declaratory of the legislative will in any given case, or in the mere frame-work of a bill enacting a law, may or may not, according to the facts, (a question, by the way, always to be settled by an adjudication) be a reason for avoiding its force, effect, and binding obligation. But, remember, *that* is the very point *to be tested and legally proved.* This, sir, is no novel doctrine. It is as old as the annals of statutes extends. To me, it only seems to require *stating* to demand and require *assent* from all right-minded and thinking men. The *contrary* leads to the unnatural conclusion that the *substance* of a thing is of no more importance than the insignificant affair of the *drapery in which* it is clothed; that the *public will* expressed by a solemn act of the law-making power should be *wholly unheeded*, because the words in which it is expressed (though clear and full as to the purpose contemplated) are not in certain set phrase of speech to *answer every man's peculiar definition of what constitutes either a multiplicity of objects or subjects, not having a proper relation to each other. Substance* of matters and things has always been regarded by courts rather than the garb in which they are dressed. So with mankind generally and legislators in particular. *Ideas* have ever constituted much more worthy of serious consideration than *words*, which are the mere medium of their expression; and I am not prepared to think that Congress contemplated, in the absence of express averment of such intention, to apply the same judgment of absolute nullity to acts of assumption of power and to laws the only objection to which consists not in the *matter*, but in the manner of

enactment. Nullity is stamped on the face of the one by authorities which no one questions, but as equally well settled is it that presumptive *validity* is claimed, and properly so, until otherwise adjudged, for the other. This principle of distinction is not less supported by authorities than it is commendatory to good sense; and I trust that all contrary doctrines, by whatever official influences now upheld in Oregon, will require in order to get a permanent foothold upon the public councils, something else besides a perversion of adjudged cases, a confusion of terms and principles and mere dictums which have no other weight to sustain them except unsupported assertion. A few words more about this law which is so unceremoniously treated as unconstitutional. If an act of the legislature is plainly *repugnant in substance* to the constitution, it is not disputed that it is void, and the courts have the power so to declare it. But they will not pronounce a legislative act to be void, except in a *clear case*. This has been long and well settled by the most eminent of the State courts, and often by the federal judiciary. Indeed so much caution and delicacy upon subjects of so important a nature as the constitutionality of a law, is manifested even by the supreme court of the United States that it has long been a rule with that distinguished tribunal that they will never take up and hear a cause involving a constitutional question *except when the bench is full*. How unlike this spirit was the recent action of my brethren in their apparent eagerness to hold a "sort of judicial coroners' inquest over the dead body of a law" which they say never had life, and in their haste to enrobe themselves with such powerful authority, even had to derive it from a resolution of the late provisional government, which, by their own showing, was passed full thirteen months before that "*defunct*" government was called into being! But they insist that if this resolution (which never *was* the offspring of the *provisional government*) does not give them power to hold a supreme court, they derive it at least through *implication*. The rationale of which they derive from the involuntary assemblage by the Legislative Assembly once, and a subsequent assemblage of the same body at Oregon city, the members of which came there without obligation of law, and only by common consent. *Therefore*, they say Oregon city *is* the seat of government *for Oregon*, and *therefore* they *can* hold a supreme court there! To understand the *force* of this it only requires *stating*. I leave it without comment. I have always supposed *heretofore* that where the *means* for the exercise of granted power, delegated and contained in a fundamental law are *expressly given* and *pointed out*, no other or *different means* or power can be implied either on account of convenience or of being more effectual. And this doctrine I am still obliged to retain and act upon, or do violence to my own humbler judgment, notwithstanding the learned opinions of my brethren declared as "by authority" at Oregon city, and as a judgment from the supreme court. I have previously said that that part of the law of Congress as to "laws having but a single object and that expressed in the title," has been construed as *directory* merely, and not imperative. If this be so, it follows that laws subject to no other objections except such as come within that kind of complaint *cannot be the* subject of *judicial review at all*. To regard it in any other light would be to make the judiciary a *despotic censor* of the legislature. It cannot be that Congress intended to confer this *censorious and monstrous power upon the judiciary*. But admitting, for the purpose of argument, that it is so, what is the objection to

the location law? That it contains more than one object—more than one object? How so? What is its object? Is it not the establishment of the public buildings of the Territory? And though it may embrace many and various provisions, are not the location and erection of the territorial buildings its *proper and only object?* Oregon territory, its seat of government; its university for the education of youth; its penitentiary for the confinement of its criminals, was the object of the law. The various details of this law *were* not its objects. There is no *plural* in its object. It will not do to *refine away laws in this manner.* Such refinements may answer as a pastime in the absence of any thing else to employ the mind about, but it cuts a sorry figure in every day practical life. Few statutes could stand such a hypercritical test. An act conferring a pension on a widow, and making provision for the support and education of the infant children of a meritorious soldier, killed in the public service; an act making appropriation to one person, for firewood, and to another for sawing it, for the use of the Legislative Assembly at its present session, and almost every other act which under the *contracted sense assume for this law* as being multifarious, would be deemed *unconstitutional.* No, the true test is not the details of the law, but its general scope, its object—and if it be in its nature, one. Such a matter as the mind acts upon at one operation, and need not necessarily be disintegrated in order to be intelligible—then it is one object and is not obnoxious to the constitutional interdict. And here I am met with the objection that, though this law may not be bad for multifariousness, it is so because its object is not correctly expressed in its title. What is the meaning of this? It is that the title should indicate, should call the reader's attention to the nature of the law; and if so, that is enough.

The constitution cannot mean, as some have assumed, that to make the law valid, the title must be a correct syllabus of it. All that can be required is, that the title should correspond with, and not be incongruous to, the provisions of the law. The probable object of this provision was to guard members of the legislature from unwittingly voting for an objectionable law under a captivating title. It is simply directory, and ought and must not be regarded as a kind of condition precedent, on which the validity of the act depends. In any other view of the subject, in order to be safe, it would be necessary for the title to recite the whole body of the act—a piece of bungling machinery that I think the common sense statesman of our day would hardly try to set in operation. Thus reasoned, in substance (I have to quote from memory in the absence of books) the chief justice of a State, on a law precisely analogous to the one under consideration by our Oregon city judges; and while I express no opinion upon its soundness—for it will be quite in time when we get a supreme court—I shall leave the subject for further consideration in a manner less hurried than the present.

You allude in your letter to the probability that party spirit, to sustain the Governor, had something to do with this strange course of proceeding and *exhibition of feeling*, had and shown by the judges at Oregon city. About that I don't feel at liberty to express an opinion. It is true, however, that the recent indiscreet assault made upon certain public men, through the whig organ at Portland, leads many simple-minded people to think so, although it is stoutly denied in high quarters. You cannot regret

more deeply than I do what has recently transpired. For surely the temple of justice is the last place whence should go out the means of kindling partizan strife, to irritate local or sectional feeling, or array the hand of man against his brother. Its mission is to dispense justice and not to inflame the multitude, and the means to accomplish the one and suppress the other alike forbid, forgetting that *reason alone*, and not passion, should ever minister at its altars. I advocate, for the present, no extreme measures, and yet, sir, it would not, to my mind, be evidential of revolution or of the influence of the "pestilential breath of the demagogue," if you should not get alarmed at these paper decrees, and go forward in the decent discharge of your just duties as a legislator, without irritation from official insult, and unterrified by the attempted usurpation of power, which can injure no one but those who use it. The great body of the people whom you serve in these times, which may be well said to try and test the strength and fitness for station of all our public servants, will be loath, I apprehend, to bring or sustain the charges of folly and demagoguism against men who stand true to the public interests.

I am, sir, yours very truly.

O. C. PRATT.

Hon. SAMUEL PARKER,
President of the Council of Oregon Territory.

No. 6.

EXECUTIVE OFFICE, OREGON TERRITORY,
Oregon City, January 1, 1852.

SIR: I deem it my duty to inform you of the present position of public affairs in this Territory, and to ask your Excellency to direct the Attorney General to communicate his opinion upon the same, with a view of enabling me as the executive power of the Territory, to discharge with intelligence the delicate duties which will devolve on me, by the extraordinary course of action on the part of a majority of the members of the present Legislative Assembly.

During the last session of the Legislative Assembly, a resolution, in the following words, duly, on the 7th day of February, 1851, passed the Council, viz: "*Resolved by the Council, the House concurring therein*, That the Legislative Assembly of Oregon Territory will meet annually on the first day of December in each year at the seat of government."

This resolution was sent to the House and duly passed that body on the 8th day of February, 1851.

Prior to this time and about February 1st, 1851, the same legislative body had passed "an act to provide for the selection of places for the location and erection of the public buildings of the territory of Oregon." This act has been submitted to your Excellency and the opinion of the Attorney General that it was a nullity, had been received and communicated through the press to the inhabitants of the Territory.

On the first Monday of December, one member of the Council, Columbia Lancaster, and three members of the House, Messrs. Wail, Matlock, and Kinney, met at Oregon city and temporary organizations of their respective

Houses were adopted; some two or three days afterwards the number of House members was increased by the addition of Mr. Brownfield, from Puget's Sound. These temporary organizations continued for about two weeks, when there being no prospect of a quorum of members at Oregon city, their bodies respectively adjourned sine die—and the members composing them returned to their homes. Whilst a portion of the members elect were thus at Oregon city, eight of the nine members which composed the Council, and eighteen of the twenty-two members which composed the House, assembled at Salem, in the county of Marion, on the first Monday in December, and organized as a legislative body; and have since assumed and are continuing to assume powers of legislation.

The rights of the Salem body to bind the people by legislation is questioned upon the ground that, although that body is composed of a majority of the members of the Legislative Assembly in both houses, yet it is not assembled in the rightful place.

Under the provisional government, the legislative power was vested in a House of Representatives (vide General Laws of Oregon, page 29.) That body, on the 19th December, 1845, passed an act, the first section of which is as follows: "*Be it enacted*, That the executive sessions of the House of Representatives be held at Oregon city until otherwise directed by law." That law continued in force up to the time of the organization of the Territory by act of Congress, and the legislature always assembled at Oregon city to do business.

By the fifteenth section of the act of Congress organizing the Territory, passed 14th August, 1848, "it was enacted that the Legislative Assembly of the Territory of Oregon shall hold its first session at such time and place in said Territory as the Governor shall appoint and direct; and at said first session *or as soon thereafter as they shall deem expedient*, the Legislative Assembly shall proceed to locate and establish the seat of government for said Territory, at such time and place as they may deem eligible," &c.

Governor Lane appointed Oregon city as the place for the Legislative Assembly to hold its first session; and the Assembly met at that place, and at the time designated in his call, which was in the summer of 1849. The legislature passed no act at this session upon the subject of the seat of government, and adjourned without even appointing a time or place for the next session.

An extra session of the legislature was held pursuant to the call of the Governor, this same year, which body assembled at Oregon city and passed a number of laws. Before adjourning, this assembly by joint resolution resolved that the next legislature should be held on the first Monday of December, 1850, without designating any place.

On the first Monday of December, 1850, the Legislative Assembly met at Oregon city. The journal of the Council commenced as follows: "*Pursuant to law*, the second regular session of the Council of the Territory of Oregon was commenced at Oregon city on Monday the 2d day of December, A. D. 1850." The journal of the House commences as follows: "Monday, December 2d, 1850. *Pursuant to law*, the second regular session of the House of Representatives of the Legislative Assembly of the Territory of Oregon, was commenced this day at Oregon city, in said Ter-

ritory." (Vide journals, local laws of Oregon, page 7 of the Council and 3 of the House.)

At this session the act was passed which has heretofore been laid before your Excellency, and the resolution, a copy of which is given in the foregoing part of this statement.

No other action has ever been had by the Legislative Assembly in reference to the time or place of its assembling: and I know of nothing else that will bear upon this question, unless it be the opinion of judges Nelson and Strong, given at a term of the supreme court holden by them on the first Monday of December last, a copy of which is herewith sent to you.

It is now claimed by some of the members of the body at Salem, as well as others, that there is no seat of government in the Territory, and that therefore a majority of the members elect, of both houses, having assembled by common consent at Salem, have the right to hold a session of the legislature, and to bind the people by their acts. By a few it is claimed that the act fixing the seat of government at Salem is binding, though the almost universal opinion is that it is void.

I respectfully ask, therefore, that the government will instruct me at the earliest moment, whether or no the legislative acts which the body at Salem assume to pass, are entitled to the force of laws. Controversies in respect to the library, and also in respect to various other matters, must inevitably grow out of the present state of things. The opinion of the government, I trust, will go very far towards settling the matter in the minds of all the good people of the Territory.

I should do injustice to the government, if I did not, so far as in my power, communicate to it the information I possess in relation to the conduct of its officers in the Territory.

Immediately after the receipt of the communication of your Excellency enclosing the opinion of the Attorney General of the United States, on the validity of "the act to provide for the location and erection of the public buildings," &c., and before the publication of that opinion, I showed it to Judge Pratt, who concurred with the Attorney General in opinion, and who then stated to me that the act was so clearly unconstitutional that there could be no two opinions about it. Judge Pratt in that interview, however, stated that there was a difference of opinion whether or no the law was not to be considered as good until the court had passed upon it. Judge Pratt was the first person whom I ever heard to suggest this view of the case. The opinion of the Attorney General was published, I think, in August. On the 16th day of September, an article appeared in the columns of the Statesman, signed Yam Hill, which number of the Statesman is also herewith sent to you. A short time, and I think on the Friday before the first Monday of December, an extra Statesman was published, containing an article signed "Emigrant," which article appeared also in the Statesman of the 2d December, 1851. Both of these communications were written by Judge Pratt, as he publicly avowed in the presence of several gentlemen, myself among the number.

The Statesman of the 23d December contains another communication from Judge Pratt, over his own signature, in reply to a letter purporting to be addressed to him by Samuel Parker, which paper is also herewith sent to you. Judge Pratt was not in attendance on the supreme court at Oregon city, but was at Salem with the members who had gone there.

In order to enable you to examine the question, without further reference, I send you, herewith, copies of the act of the Legislative Assembly, of my message in relation thereto, my correspondence with the Attorney General, besides the other documents before spoken of. In my judgment, the course pursued by Judge Pratt, in writing for the press, the great personal interest taken, and the activity manifested by him in this affair, joined with his personal intercession with members of the legislature, to induce them to adopt views different from those formerly entertained by them, has been the great if not the sole cause of the present anarchy that prevails in this Territory. I wish to state facts only to your Excellency, and to leave motives to be inferred from these facts.

I submit whether duty, if not policy, does not demand that an investigation should not be made of Judge Pratt's conduct, so that if he has been guilty of gross impropriety of attempting to forestall, through the press, the minds of the members of the legislature, as well as others, upon a subject which he must have known would come up before him in his character as a judge; and if he has been endeavoring to destroy the efficacy of authority, which by his oath he is bound to administer as well as support, such measures may be adopted by the government as will disarm him of making use of official influences for mischievous purposes.

I have the honor to be, very respectfully, your obedient servant,

JNO. P. GAINES.

His Excellency M. FILLMORE,
President United States, Washington city.

No. 7.

OFFICE OF ATTORNEY GENERAL,
March 22, 1852.

I have examined that letter addressed to you, under date 1st January, 1852, by the Hon. John P. Gaines, concerning the political affairs of the Territory of Oregon, which you were pleased to refer to me for an opinion, and report thereon.

It is unnecessary for me to repeat the statements made in that letter. It appears from them, that in January and February, 1851, a bill passed the two branches, respectively, of the Legislative Assembly of the Territory of Oregon, by which it was, among other things, enacted, that the seat of government of that Territory, which had theretofore been the city of Oregon, should be thereafter established and located at Salem, in the county of Marion. This act is entitled, "An act to provide for the selection of places for location and erection of the public buildings of the Territory of Oregon;" and contains further provisions for the establishment and location of a penitentiary at Portland, in the county of Washington, and of a university at Marysville, in the county of Benton; and for the appointment of certain named persons to constitute boards of commissioners to contract for and superintend the erection of the public buildings at Salem, and the penitentiary at Portland; and for the disposition and application of the means and money granted by Congress for any of those objects.

The consistency of this act with the organic law of the Territory, and its validity, became an immediate subject of controversy. The governor announced in a written communication to the Legislative Assembly, his dissent to their act, and his convictions of its invalidity. The legislature persisted in its act, and adjourned without any thing done to obviate the inconveniences and evils inevitably to result from such a state of things.

At the next stated meeting of the Legislative Assembly, its members, according to their respective opinions of the validity or invalidity of the said act, for removal of the seat of government, &c., assembled, some at Oregon city, which had theretofore been the actual, if not lawful seat of government, and others at Salem, the place designated as the seat of government by the said act.

Those that convened at Oregon city, being few in number, soon adjourned; but the majority assembled at the new seat of government, Salem, there organized as a legislative body, and at the date of Governor Gaines's letter to you, had assumed, and have since probably proceeded to exercise legislative powers. Some time in the last year, and soon after you were apprised by the Governor of the passage of the disputed act for the removal of the seat of government of the Oregon Territory, you were pleased to require my opinion as to the validity of that act; and in my letter to you of the 23d day of April, 1851, I expressed the opinion, and stated the grounds on which it was formed, that the act was inconsistent with and in violation of the organic law of the Territory, and was void. Since that time, the supreme court of the Territory has decided to the same effect, and that Oregon city was, according to law, the seat of government.

When this decision was rendered, the court consisted of but two judges; the third was absent, and through several articles and arguments, published in newspapers, has made his dissent known. By the organic law, the supreme court is required to be held "at the seat of government," so that the same question, "where is the seat of government?" is equally applicable to the court and to the legislature, and equally affects both.

Thus it appears that the act of January and February, 1851, for the removal of the seat of government from Oregon city to Salem, is regarded by the Governor as repugnant to the organic law, and void; that it has been solemnly so decided by the supreme court of the Territory, and that Oregon city is the lawful seat of government; that the court is accordingly holding its session there, and proceeding in the discharge of its judicial duties; while a large majority of the members elected to the present Legislative Assembly, adhering to the said act of the preceding Legislative Assembly, has assembled at Salem, insists that that is the seat of government, and has there orgaized as a legislative body, and has assumed and exercised legislative powers.

Such, sir, is the state of affairs in Oregon, as will more fully appear from the documents which you were pleased to refer to me.

From such a conflict of the public authorities, the most unhappy consequences can alone result; controversy and confusion and high excitement are represented as having already spread through the Territory, and these evils must increase in the course of time, if some remedy be not applied. The members elected to the Legislative Assembly, who have assembled and organized at Salem, refuse all respect and conformity to the decision of the

supreme court of the Territory, and that court having decided that the meeting of the assembly at Salem was illegal, will, as a plain consequence, regard and hold all their acts as nullities.

The source of all these troubles is the act so often alluded to, for the removal of the seat of government and other purposes.

Having, as before stated, given my opinion as to the legal validity of that act in my letter to you of the 23d day of April, 1851, I have now only to refer you to that letter.

There is no other question of law involved in the case as now presented, and therefore I ought, perhaps, to conclude here. But you will excuse me for suggesting, that I see no proper remedy for the state of things existing in Oregon, but that which must be found in the wisdom and power of Congress. By its supreme authority, Congress can put an end to the disputed question about the seat of government, and can dispose of all the other minor or incidental questions which have sprung up and contributed to the disorder and confusion that now prevail in Oregon.

It would seem to me, therefore, to be proper for the President to recommend such a course to Congress, and to communicate to them all the information in his possession relating to the subject.

I venture on these suggestions with diffidence, as being, perhaps, beyond the ordinary limits of my official duties. They are, however, most respectfully submitted to your better judgment, and I have the honor to remain,

With great regard, yours, &c.

J. J. CRITTENDEN.

To the PRESIDENT.

P. S.—The papers submitted to me, are all returned herewith, and I send you also a copy of my former opinion, contained in my letter of the 23d of April, 1851, above referred to.

J. J. CRITTENDEN.