Deseret News, “First Judicial Court,” 6 March 1852, 4.

5. On February 10, 1852, Associate Justice Zerubbabel Snow reported the results of the Luján trial to Willard Richards, President of the Legislative Council and later sent a copy to the *Deseret News* for publication.[1]

Document

FIRST JUDICIAL COURT.

GREAT SALT LAKE CITY;

Feb. 10, 1852

Mr. EDITOR.–Dear Sir, I have had before me, at the present session of the court, a few cases which I think ought to be reported. I therefore respectfully request you to publish the report of the same, which I herewith send

Very respectfully,

Your obedient servant,

Z. SNOW

To the Hon. WILLARD RICHARDS.

THE UNITED STATES First Judicial Court.

vs. Pedro Leon et al. . . .

The material facts are these: In September last, twenty-eight Spaniards left New Mexico on a trading expedition with the Utah Indians, in their various localities in New Mexico and Utah. Twenty-one of the twenty-eight were severally interested in the expedition, the residue were servants. Among this company were the Spaniards against whom these suits were brought. Before they left, Pedro Leon obtained a license from the Governor of New Mexico to trade on his own account with the Utah Indians, in all their various localities. Another member of the

[1] “First Judicial Court,” *Deseret News,* 6 March 1852, 4.

company also had a license given to blank persons by the Governor of New Mexico.[2] The residue were without license. They proceeded on their route until they arrived near the Rio Grande, where they exchanged with the Indians some goods for horses and mules. With these horses and mules, being something more than one hundred, they proceeded to Green River, in this Territory; where they sent some five or six of their leading men to this city to see Governor Young, and exhibit to him their license; and, as the Spanish witness[3] said: if that was not good here, then to get from him another license. Governor Young not being at home, but gone south, they proceeded after and found him November 3rd in San Pete Valley. Here they exhibited to the Governor their license, and informed him they wished to sell their horses and mules to the Utah Indians, and hav[e] Indian children, to be taken to New Mexico. Governor Young then informed them that their license did not authorize them to trade with the Indians in Utah. They then sought one from him, but he refused to give it, for the reason that they wanted to buy Indian children for slaves. The Spaniards then promised him they would not trade with the Indians, but go immediately home. Twenty of the number, with about three-fourths of the horses and mules, left pursuant to this promise, and have not been heard from since. The eight who were left behind are the men who are parties to these proceedings.

Their trouble arose in this manner, according to the testimony of two servants among them: Some of them came to this city to buy provisions for the homeward route, while others took charge of the horses. When at San Pete before they left, the Indians being mad because they would not trade with them, stole some five or six of their horses; but these they let go without searching for them. Those who came here for provisions, left this city for Santa Fe, about the 10th

[2] A license to trade signed by James S. Calhoun, with a blank line where the name of the license holder would typically be recorded, was among the property confiscated from the Spanish traders. See Jones, *The Trial of Don Pedro León Luján*, 122.
[3] Here Snow is referring to Phillipe Santiago Archuleta's testimony from January 16, 1852 (Document 2h above).

of November, and went to the Spanish Fork, sixty miles from this city, where they had six horses stolen by the Indians. They then made an effort to regain these horses, but could not find them, though they found the tribe of Indians which stole them. In their efforts to find these horses, they travelled to the Severe River and Lake, then to the South Spanish Fork. During this route, they obtained for stolen horses one squaw and three Indian children.–At the South Spanish Fork, which is south of Manti; in the Valley of San Pete, three other Indian children were obtained for horses; but whether this was a forced trade or a species of Spanish and Indian deal; did not appear.

The Spanish witness said, the Spaniards refused to trade with the Indians, but, that they came with the children, caught the horses, and threw down the children, saying they would have the horses whether the Spaniards took the children or not.

The night this took place, was about the fifth or sixth of December, and being the first that was heard from the Spaniards after they left this city; some Indians went to the city of Manti and informed the whites in relation to this trading.

A warrant was then issued by a justice of the peace, by virtue of which the Spaniards were arrested; and the horses, mules, squaw, and seven Indian children, were found with them. A court of inquiry by the justice of the peace, was then held in Manti; but the result of which, I did not inquire into. At Manti one horse was given to an Indian and another Indian child taken; this was done by the J. P.[4], pursuant to an alleged agreement to that effect.

While those things were going on at Manti, a messenger was sent to Governor Young at this city, informing him of the affair. He dispatched Stephen B. Rose, Indian sub-Agent, to that place, to inquire into the matter, and cause the laws to be observed.

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[4] Justice of the Peace.

Stephen B. Rose made affidavit before the clerk of these facts, and obtained a warrant commanding the marshal to arrest the eight Spaniards, naming them; also to seize the property found in their possession, the squaw, and the eight Indian children, and bring them before this court.[5]

In obedience to this warrant, the marshal in company with Stephen B. Rose, went and arrested the Spaniards, seized ten mules and six horses, the squaw and the eight Indian children, and brought them to this city.

The Spaniards then sent a petition to me, stating that they were in the custody of the marshal on a charge of violating the laws of the United States, and praying for a speedy trial. I then called a special session of court for their benefit to commence one week only earlier than the general term. The marshal, pursuant to an order made at the call of the special session, returned the warrant duly endorsed, that he had arrested the Spaniards, seized the horses and mules, and Indian children; and had them in his custody. The warrant, on examination, did not describe the property to be seized; but commanded the marshal to seize the *property found in the Spaniards' possession*.

The District Attorney then filed declarations in debt against each of them, and pleas were filed in most of the cases. The information was also filed, and the court made an order fixing the time of trial for the Information, and directing notice to be given of its pendency pursuant to the eighty-ninth section of the act of Congress for the collection of the revenue of the United States.

The Information alleged the forfeiture to have been made in the Indian country, in the Territory of Utah, so that if they violated the law in New Mexico, it was not legally in issue.

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[5] Marshall Joseph L. Heywood listed "three Indian Boys & five Indian Females" among the property he seized for a total of eight captives. Sometimes the adult Indian woman is omitted in the record and sometimes she is included. With an adult woman included, the total captives would have been nine. See document "c" above, First District Court, Minute Book, 1851-1896, Series 10035, Reel 1, 28, UDARS.

It claimed a forfeiture of the horses and mules and Indians as slaves.

There was also evidence which showed that for a long series of years the Indians in these vallies [sic] have been in the practice of selling their children to Spanish traders and stealing and selling children belonging to other tribes.

To this Information the Spaniards denied the violation of the law and claimed their horses and mules, but abandoned all claim to the Indian children and squaw.

Joshua Slayton, an attorney of this court on behalf of the Indians, filed a claim for their release.

The jury were instructed that if they found the claimants without a license introduced the horses and mules into the usual hunting ranges of the Indians in this Territory with an intent to trade with the Indians, their verdict should be for the United States.

But if they found, that the Spaniards introduced the horses and mules into the usual hunting camps or ranges of the Indians in this Territory, with an intent to come here, get a license from the Indian Agents here, and then, and not till then, to trade with the Indians, it was not within the act of Congress.

That if they found that the alleged trading with the Indians at the South Spanish Fork was forced upon the Spaniards by the Indians, this would not be such a trading as to bring it within the act of Congress; but if it was only a device to evade the law, it would be within the act.

The cases were conducted by Mr. Blair on the part of the United States; Mr. Slayton on the part of the Indians; and Mr. Smith, Mr. Picket[6] and Mr. Slayton on the part of the Spaniards.

Mr. Picket, Mr. Smith and Mr. Slayton, in behalf of the claimants, contended,

[6] William Pickett (c. 1818-c.1893).

1st. That the court has not jurisdiction in this matter, for the reason that it has not the legal custody of the goods, the same being seized by the marshal on a writ issued on the Common Law side of the court, and not by virtue of a monition issued in admiralty or exchequer.

2d. That this court has not jurisdiction of the matter, for the reason that Information shows the seizure to have been made in the *second* judicial district of the Territory of Utah, and this court is sitting in the *first*.

3d. That by the Treaty of Guadalope [sic] Hidalgo,[7] the United States obtained this Territory, discharged of the right of occupancy by the Indians; and for this reason the Territory of Utah is not Indian country, within the meaning of the laws of the United States regulating trade with the Indian tribes.

4th. That the settlements in this Territory, being made when this was Mexican domain, and when there was no law of the United States in force here; they must, as against the United States, be considered legal settlements, so far at least as will be necessary to protect the citizens from the penal consequences of settling on Indian soil or trading with them in this Territory.

5th. That by the act creating the Territory of Utah, Congress in effect recognized the legality of the white settlements within its entire limits, and established the boundaries of the Territory, as the boundaries of the white settlements or country to be under the Territorial Government.

6th. That the Indian country, within the meaning of the laws of the United States regulating trade with the Indian tribes, is and must of necessity be under the sole, and exclusive

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[7] The Treaty of Guadalupe Hidalgo (1848) ended the U. S. War with Mexico and transferred what would become the states of California, Nevada, and Utah, and parts of Arizona, New Mexico, Colorado, and Wyoming to the United States. It also settled the Texas boundary dispute at the Rio Grande River. The U.S. paid $15 million for the land and guaranteed the rights of citizenship to the people living on the transferred land, although in practice the realization of those rights were not universally actualized. See Rachel St. John, *Line in the Sand: A History of the Western U.S.-Mexico Border* (New York: Oxford University Press, 2011); and Brian DeLay, *War of a Thousand Deserts: Indian Raids and the U.S.-Mexican War* (New Haven: Yale University Press, 2008).

jurisdiction of the United States; and be separate from the country under the jurisdiction of a State or Territory; that Congress, by creating the Territory and giving jurisdiction over it to the people here, have in effect destroyed their exclusive jurisdiction over what might otherwise be said to be Indian country; and therefore, the law creating this supposed forfeiture ought not to be held to be applicable to this Territory.

7th. That this Territory must be held to be entirely Indian country or entirely under the control of the Territorial Government or partly Indian country, and partly under the control of the Territory, that as Congress first created the Territory and gave it a legal existence as a branch of the United States, and afterwards extended the Indian laws over it, without defining the boundaries of the Indian country, and separating it from the residue; and as the laws regulating trade with the Indians in the Indian country, are local in their application, the laws regulating trade with the Indian tribes, unless they can be so construed as to harmonize with the laws which are general in their application, must be held to be subordinate to the general laws.

8th. That in this case, the law creating the Territory recognized the legality of these settlements, and the law, extending the Indian regulations over the Territory in effect, rendered all settlements here illegal; and trading with an Indian in a white settlement even to selling him a few pounds of flour, also illegal to do this, subjects the white man to a forfeiture of his goods and a penalty of five hundred dollars; a result which cannot be presumed to be in the mind of Congress. These laws ought therefore to be construed, so as to protect, not destroy the citizens.

9th. The law creating this penalty and forfeiture, is a penal enactment; it should receive a strict construction; every act in relation to it which can reasonably be resolved in favor of innocency, should be held not to be within its provisions.

10th. In this case the testimony shows, that these Spaniards came from New Mexico to this Territory with some goods, horses mules, &c., through the mountains, that their object was to come here, obtain a license to trade with the Indians, and then, but not till then, trade with the Indians; surely it must be lawful to travel from New Mexico here to obtain a license to trade with the Indians.

11th. Horses and mules are not merchandize within the meaning of the act of Congress.

Mr. Slayton contended on behalf of the Indians,

1st. That slavery being against human liberty can not exist by implication, but it must have the authority of law to sustain it; that this law must be clear and explicit; it must be such as shows clearly its existence.

2d. That there was no law in the United States authorizing Indian slavery, nor that even justified it.

3d. That there is no law of the Territory of Utah that authorizes Indian slavery; and that for these reasons the Indian children ought to be adjudged to be free.

4th. The fact that the Utah Indians had for some years past been in the habit of selling their children to the citizens of Mexico did not change the case nor establish Indian slavery; that Indians not being the subject of property could not be bought and sold by citizens of the United States without some law authorizing it or declaring them to be the subject of property.

Mr. Blair contended on behalf of the United States,

1st. That the United States, by the Treaty of Guadalope [sic] Hidalgo, took this Territory with New Mexico and California subject to the Indian right of occupancy; and now hold these Territories, so far as relates to the Indians, the same as they hold other Indian countries belonging to the United States.

2d. That this entire Territory was originally inhabited by Indians who had the right of occupancy; that this right had not been extinguished, and therefore this whole Territory is to be held as Indian country, within the meaning of the laws of the United States regulating trade with the Indian tribes.

3d. That by the laws of the United States slavery is clearly recognized, it being a part of the laws of the United States, that each State and Territory shall regulate its own affairs in its own way; and therefore in those States where slavery exists, it is a part of the law of the United States to sustain it; and in the States and Territories where it does not exist, it is a part of the law of the United States to reject it; so that the laws of the United States both adopt and reject slavery depending on the State or Territorial laws. This he contended is the legitimate result of the national compact.

4th. That this Territory being a part of the country ceded to the United States by Mexico in the treaty of peace, the laws of Mexico in force here at the date of the Treaty, continue to be in force so far as they have not been changed by the United States.–The facts show that for a long series of years the Indians here have been in the constant practice of selling their children to the Mexicans for slaves, and that the court must therefore deem it a lawful trade; that the laws of the United States, which have been extended over the Territory, do not prohibit this traffic; it is therefore a lawful trade. The Indians should be held as slaves.

5th. That the facts show more than a probable cause for the seizure, they show a good cause; but, if only a probable cause be shown, it is enough to throw the burden of proof on the claimants to establish their innocence; that is, to show they were lawfully engaged in their trading expedition. This they have not done. For this reason the property should be condemned.

6th. That though the process by which the court obtained the property mentioned in the Information, may have been irregular, yet that, with the return of the marshal thereon, shows the property to be in the possession of the proper officer of the law; and the filing of the Information shows that the United States have adopted the seizure. The court therefore have jurisdiction of the property, and should proceed.

7th. That this court has jurisdiction of the matter sitting in the first judicial district, though the seizure may have been made in the second judicial district of the Territory of Utah.

By the Court: . . .

It is my duty to notice the situation of the country, when the law regulating trade and intercourse with Indian tribes, was passed.[8] Also the fact that this Territory has, quite recently, been created out of what was, a few years ago, Mexican domain; that it is inaccessible, only through regions of country occupied exclusively by the Indian tribes; that to come and trade or settle here, the inhabitants or traders must introduce themselves and their goods into the Indian hunting grounds, and continue therein until their arrival in the white settlements; that the settlements here were made, by citizens of the United States, when the government was at war with Mexico, when by the laws of war, the citizens or subjects of the belligerents, may lawfully enter the country of their enemies, slice off a "patch," and hold it subject to the order of their own government; that no part of this Territory has been purchased of the Indian tribes; that, if they had a right of occupancy to this Territory the same, as they once had to other parts of the United States, this right has not been extinguished by purchase; and that until quite recently, the laws regulating trade and intercourse with the Indian tribes has not been extended over the Indian tribes of this Territory.

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[8] Here Snow refers to "An Act to regulate trade and intercourse with the Indian tribes," which passed Congress on June 30, 1834.

The laws of the United States having been extended over, and being now the supreme law of this Territory, it becomes my duty to examine them.

In the act creating this Territory; approved September 9, 1850, section 17, I find the following language:

"That the Constitution and laws of the United States are hereby extended over, and declared to be in force in said Territory of Utah, so far as the same, or any provision thereof, may be applicable."[9]

By this act the Government of the United States and the government of the Territory, as a branch of the United States, were set in motion here. It imposed on the courts of the United States, as cases might arise, the duty of deciding what provisions of the general laws were applicable in this Territory.–But it did not bring with it laws locally inapplicable; such may be thought to be the laws regulating trade, and intercourse with the Indian tribes; they being confined to districts of country which were defined by them to be Indian country.

It is probable, that Congress took the same view of these laws as myself, as we find them February 27, 1851. See Act of last session, chap. 19, sec. 7, using the following language:

"That all the laws of the U. S. now in force regulating trade and intercourse with the Indian tribes, or such provisions of the same, as may be applicable, shall be and the same hereby is extended over the Indian tribes in the Territories of New Mexico and Utah."[10]

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[9] Here Snow refers to "An Act to Establish a Territorial Government for Utah," September 9, 1850, *Statutes at Large*, Vol. 9, 31st Congress, 1st Session, (Boston: Little, Brown, and Company, 1862), 453-458.

[10] Here Snow refers to "An Act making Appropriations for the current and contingent Expenses of the Indian Department, and for fulfilling Treaty Stipulations with various Indian Tribes, for the Year ending June the thirtieth, one thousand eight hundred and fifty-two," 27 February 1851, *Statutes at Large*, Vol. 9, 31st Congress, 2nd Session, (Boston: Little, Brown, and Company, 1862), 574-587.

What does Congress intend by this? Do the words in this section, “the Indian tribes,” and the words, “Indian-country,” in the section of the Act on which this Information is predicated, when applied to New Mexico and Utah, mean the same thing?–Are they synonymous terms?

The usual meaning of the words, “the Indian tribes” is the Indians themselves; and of the words “Indian country” is the country occupied by the Indians from which the whites are excluded by reason of the Indian right of occupancy. This signification ought therefore to prevail, unless Congress by its legislative enactments, have given a different definition of these words.

Again, do the words, “all the laws now in force regulating trade and intercourse with the Indian “tribes,” bring with them all the various enactments on this subject, or do the words “or such provisions of the same as may be applicable” qualify the previous general clause. It appears to me that Congress intend the law to be understood thus: “such provisions of all the laws of the United States now in force regulating trade and intercourse with the Indian tribes” as may be applicable, shall be and the same hereby are extended over the Indian tribes, in the Territories of New Mexico.

If this be the correct construction, and I think it is the only reasonable one, then it, like the act creating the Territory, makes it the duty of the courts to decide what provisions are, and what are not applicable. In this event none can know, only as cases may arise, what provisions will, and what will not be held applicable. This is not quite consistent with the spirit of our institutions.

Though this may be the case, yet the courts are not at liberty to disregard it; they must declare the law to be what may reasonably be supposed to have been in the mind of the legislature.

Again, they use the words, 'over the Indian tribes.' Does this mean that the Territories of New Mexico and Utah shall be deemed and taken to be "Indian country" within the meaning of the act of June 30, 1834, and thus indirectly bring with it all the provisions of that statute, to be executed in each and every part of these Territories? If so, then to reside in Utah or New Mexico as a trader, according to the literal phraseology of the act, with the honest intent of trading with the whites, subjects the trader to the forfeiture of his goods and five hundred dollars. So, if any, citizen trade with another citizen, or if citizens with an honest intent of settling here introduce their goods into the Territory, that moment the goods would be forfeited, and they subjected to a fine of five hundred dollars.

So also would the entire criminal code of the United States be in force in these Territories, the same as it would be if Congress had the sole and exclusive jurisdiction in and over the same, for I find in the 25th section of the act of June 30th, 1834, the act on which this suit is predicated, the following language:

"That so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States, shall be in force in the Indian county, provided the same shall not extend to crimes committed by one Indian against the person or property of another Indian."[11] This does not appear reasonable, nor do I think such a result could by any possibility have been in the mind of Congress; yet this result must follow, if New Mexico and Utah are to be deemed "Indian country," within the meaning of the statute on which this suit is brought. . . .

On a careful examination of these Acts, it appears to me, that Congress has contemplated their country to be separate and distinct from the country of the local authorities of the States and

[11] "An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," 733.

Territories. If the Indians pass into the jurisdiction of the States or Territories, then they must be dealt with according to the laws of the local authorities; but in their own country the laws of the United States must regulate their conduct and the conduct of the Whites in relation to each other.

The question now is, are New Mexico and Utah to be deemed "Indian country" within the meaning of the Act of June 30, 1834, or are we to give a judicial definition to the words "Indian country," when applied to these Territories. It appears to me, they are not Indian country within the meaning of the Act referred to, but notwithstanding this it clearly appears that Congress has the right to regulate trade and intercourse with the Indian tribes in these Territories, as elsewhere in the United States; and that, by the Act of Feb. 27, 1851, Congress did intend to regulate that trade with them. I therefore feel justified in departing or even feel compelled to depart from the legislative definition of the words "Indian country," used in the Act under consideration, and judicially define them when applied to acts committed in Utah, leaving the legislative definition to prevail when the acts complained of are committed in the country described in the Act of Congress. Now to do this nothing is more reasonably [sic] than to use the words in their usual sense, that is, the words "Indian country," means the country occupied by the Indians for their usual hunting camps or ranges, including their towns or villages, &c., from which the White settlements are separate, or in which the white[s] are not included.

As this Territory is inaccessible only, through some [one] or more of these hunting ranges or camps of the Indians; I find it necessary to protect honest emigrants, to hold that the words "introduce goods," in the 4th section of the Act of June 30, 1834, must be qualified with an intent to trade with the Indians, or that introduction of goods here will not be within the meaning of the Act.

This it is believed, will enable Congress to execute such provisions of these laws in this Territory, as may be applicable; and at the same time, protect the rights of the Territorial legislature, and thereby protect the inhabitants.

I will now return to the second objection to the jurisdiction of this court. By the Act creating this Territory, it is provided, that it shall be divided into three judicial districts; and a district court shall be held in each district, which shall have jurisdiction in all matters growing out of the constitution and laws of the United States, as is vested in the circuit and district courts of the United States.

These suits grow out of the laws of the United States, and the district courts have jurisdiction of these matters.

The 27th section of the Act of June 30, 1834, relating to Indian affairs, provides that all penalties for violating the same, may be sued for before any court having jurisdiction, in any State or Territory in which the defendant may be arrested or found.[12]

Under this Act, jurisdiction does not depend on the place where the act is committed, but is given to the court where the defendant can be arrested or found. By the same act Indian Agents, and other officers of the United States, may arrest persons and seize property &c., and take them to court for adjudication. In this Territory it would seem to be submitted to their discretion as to what court they would convey the property and persons for adjudication; they being responsible for the abuse of this discretion. I look upon this arrest and seizure, as the act of the Indian Agent, though he made use of the process of the court. I see nothing in the law ousting the jurisdiction, and as we now have the custody of the persons and property, I think I ought to sustain it.

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[12] "An Act to regulate trade and intercourse with the Indian tribes," 733-734.

In relation to the Indians, I do not find any law of Congress, nor has any been called to my attention, that recognizes Indian Slavery. True, I find in the Act creating the Territory a clause giving to the people here the right to introduce slavery, or reject it, but the right to introduce it, is one thing, and the exercise of that right, is another. This right, however, is in the Governor and Legislative Assembly, not in the court. It is enough for the court to follow, not lead, the legislature on a subject so important as this. I do not find any law of the Provisional or Territorial government on the subject.

The fact, that the Indians for a long series of years, have been in the habit of selling their children, and stealing others to sell, cannot by the court be considered sufficient to justify any other decree or order, than their release.

It has been made a question whither [sic] horses and mules are merchandize within the meaning of the 4th section of the Act of June 30th, 1834.[13] The usual meaning of the word "merchandize," does not include this class of property; but it appears to me, when such property is taken into the Indian country to be sold to the Indians as "merchandize," that it ought to be so held by the court. In such cases the law treats it as "merchandize." To hold otherwise a wide door, for fraud and illegal trafic [sic] would be thrown open.

In relation to the license given to Pedro Leon, I do not find any law of Congress authorizing a superintendent of Indian affairs in one superintendency, to give license to trade in another superintendency. On the contrary, I do find laws which strongly indicate a different doctrine, if not prohibit such a practice. I think therefore that his license was good as to him, but not to the residue of the company, so far as related to trading in New Mexico, but not in Utah.–

[13] Section four reads: "And be it further enacted, That any person other than an Indian who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein without such license, shall forfeit all merchandise offered for sale to the Indians, or found in his possession, and shall moreover forfeit and pay the sum of five hundred dollars." See "An Act to regulate trade and intercourse with the Indian tribes," 729-730.

As to the license given to “blank” person. I think it is void. It does not appear to me, that Congress has authorized Indian Agents to issue that class of instruments; if I am correct, then it is a nullity. I am correct unless blank be somebody, and somebody be blank.