

Gov. Geary and the Judiciary.

We learn that at the late term of the U. S. District Court, a man by the name of Hays, who lives near Kickapoo was indicted by the Grand Jury for the murder of a man by the name of Buffum. Judge Lecompte on the first application refused to admit Hays to bail, but upon a second application, it being represented that at most, it was only a suspicion against Hays, and further that he could prove his absence from the place at the time the murder was committed, Judge Lecompte admitted him to bail. The Judge we understand assumes it to be the law, as well as precedent in higher cases, that in the U. S. courts, a Judge in his discretion may bail in a case of murder. We learn complaint is made by some against Judge Lecompte, that he refused to hear argument for bail in the case of others, but in this case heard counsel, and then admitted Hays to bail. We know nothing of this, but presume Judge Lecompte has some justifiable reasons for what he has done.—

The Governor being absent at the time bail was allowed, on his return the Marshall called to see him on business, when the Gov. ordered him to arrest Hays, upon the ground that murder is not a *bailable* offence. Marshal Donaldson, at first made some excuse, but finally objected to make the arrest. The Governor then ordered Col. Titus, who is in command at that place of a portion of volunteer forces in the U. S. service, to take the writ and arrest Hays. He proceeded to execute the writ in obedience to the orders of the Governor. We have learned that Col. Titus arrested Hays, and has lodged him in jail at Leocompton. The Governor we understand, will lay the facts before the President, and says he will resign if Judge Lecompte and Marshal Donaldson do not resign, or are removed. This is a question between the Executive and the Judiciary, involving a legal point, in which we are not competent to judge, as we are no Lawyer. But the authorities give us precedence for bailing by the Judge of a U. S. court for murder, and even on a charge of treason. In the case of Aaron Burr, charged with treason, one of the lightest offences known to our laws, he was bailed. Judge Lecompte bailed Robinson, Brown and others, who were charged with treason. We regret exceedingly to hear of this difficulty, and believe it has grown out of a misconception of the powers that each one possesses.

The following is the correspondence that took place between the Governor and Marshal Donaldson.

EXECUTIVE DEPARTMENT, }
 Leocompton, K. T., Nov. 10, '56. }
 To J. B. DONALDSON,
 Marshal of the Territory of Kansas:

SIR. An indictment for murder in the first degree having been duly found by the Grand Jury of this Territory against Charles Hays for the murder of a certain David C. Buffum, in the county of Douglas, in this Territory; and the said Charles Hays having been discharged upon bail as I consider in violation of law. This is therefore to authorize and command you to re-arrest the said Charles Hays, if he be found in the bounds of this Territory, and safely keep him, until he is duly discharged by a Jury of his county according to law.

Given under my hand and seal, at the city of Leocompton, the day and year }
 { SEAL. } above written.
 JOHN W. GEARY,
 Gov. of Kansas Territory.

U. S. MARSHAL'S OFFICE, }
 Leocompton, K. T., Nov. 9, 1856. }
 To his Excellency John W. Geary, }
 Governor of the Territory of Kansas:

SIR.—Your order bearing date of to-day, for the arrest and commitment to jail of Charles Hays, who has been indicted by the Grand Jury of the U. S. District Court, for the murder of David C. Buffum, and discharged upon bail, by the Hon. Samuel D. Lecompte, Chief Justice of Kansas Territory, has been maturely considered by me, and after such consideration I respectfully decline executing your order for the following reasons: 1st. As a ministerial officer, I am unwilling to arrogate to myself the power to contravene or set aside the acts of a Court of Justice, even if I disapproved of the acts of such court, and more especially as I am not advised of any law conferring such power upon me.

2nd. Because I am clearly of the opinion that my act would be in violation of the law I have sworn to support and execute.

3rd. In making such arrest, without a legal warrant, or other circumstances as would otherwise justify it, it is most clear to my mind that I would lay myself liable to a suit of damages which might involve and ruin my securities.

The foregoing reasons and my own convictions of duty as a law officer have irresistibly impelled me to this decision.

I must be permitted to say to your Excellency, that I regret exceedingly, that my convictions of duty has constrained me to decline the execution of your warrant. I had hoped that my diligence in making the arrest of C. Hays and others, would have shielded me from the imputation which your remarks this evening seem to imply. As proof of this, I beg leave to state that the warrant for his arrest issued on the 29th of October, was put in my hands the next day, and although 100 miles had to be travelled, in four days afterwards he was lodged in prison. Your determination as expressed this evening, (if I refuse to execute your order) to suspend me or procure my removal by the President, induces me to say, that I had some days since, determined to discontinue my present official relation to the Territory, and I now desire the favor of you, to assure the President of my gratitude for his confidence and kindness, and ask him to relieve me from my present position as soon as may be convenient.

Very respectfully,
 Your obt. serv't,
 J. B. DONALDSON,
 U. S. Marshal of K. T.