LITTLE MARY'S WISH.

BY MRS. L. M. BLINN.

"I've seen the first robin of Spring, mother dear,
And have heard the brown darling sing.
You said, 'Hear it and wish, 'and 'twould surely come true,'
So I wished such a beautiful thing!

"I thought I would like to ask something for you,
But I couldn't think what there could be
That you'd want while you had all these beautiful things.
Besides, you've *got* papa and me.

"So I wished for a ladder, so long that 'twould stand,
One end by our own cottage door,
And the other go up past the moon and the stars,
Till it leaned against Heaven's white floor.

"Then I'd get you to put on my pretty white dress,
And my sash and my darling new shoes;
And I'd find some white roses to take up to God,
The most beautiful ones I could choose.

"And you and dear papa would sit at the foot,
And kiss me, and tell me 'good bye;'
Then I'd go up the ladder, far out of your sight,
Till I came to the door in the sky.

"I wonder if God keeps His door fastened tight?
If but one little crack I could see;
I would whisper, 'Please, God, let this little girl in;
She's as tired as she can be!

"She came all alone from the earth to the sky;
For she's always been wanting to see
The gardens of Heaven, with their robins and flowers;
Please God, is there room there for me?'

"And then when an angel had opened the door,
God would say, 'Bring the little child here;'
But He'd speak it so softly I'd not be afraid;
And He'd smile just like *you*, mother dear!

"And He'd put His kind arms 'round your dear little girl,
And I'd ask Him to send down for you,
And papa, and cousin, and all that I love;
Oh dear, don't you wish 'twould come true!'"

The next spring time when the robins came home,
They sang over grass and flowers
That grew where the foot of the ladder stood
Whose top reached the heavenly bowers.

And the mother had dressed the pale, still child,
For her flight to the summer land,
In a fair white robe, with a broken rose
Folded close in her pulseless hand.

And now at the foot of the ladder they sit,
Looking upward with quiet tears,
Till the fluttering robe and the beckoning hand
Of the child at the top appears.

Cleveland, O., Herald.

LIMITS OF RESERVATIONS FOR TOWN SITES.

Proceedings of U. S. House of Representatives, April 13, 1876.

Mr. CROUNSE, also from the committee on public lands, reported back, with the recommendation that it do pass, with amendments, the bill (H. R. No. 1765) respecting the limits of reservations for town sites upon the public domain.

The bill was read, as follows:

Be it enacted &c., That the existence on incorporation of any town upon the public lands of the United states shall not be held to exclude from pre-emption or homestead entry a greater quantity than twenty-five hundred and sixty acres of land, or the maximum area which may be entered as a townsite under existing laws, unless the entire tract claimed or incorporated as such town site shall, including and in excess of the area above specified, be actually settled upon, inhabited, improved, and used solely and exclusively for business and municipal purposes.

SEC. 2. That where entries have been heretofore allowed upon lands afterward ascertained to have been embraced in the corporate limits of any town, but which entries are or shall be shown, to the satisfaction of the Commissioner of the General Land Office, to include only vacant unoccupied lands of the United States, not settled upon or used for municipal purposes, nor devoted to [illegible] use of such town, said entries, if regular in all other respects, are hereby confirmed and may be carried into patent: *Provided*, That this confirmation shall not operate to restrict the entry of any townsite to a smaller area than the maximum quantity of land which, by reason of present population, it may be entitled to enter under section 2389 of the Revised Statutes.

SEC. 3. That whenever the corporate limits of any town upon the public domain are shown or alleged to include lands in excess of the maximum area specified in Section 1 of this act, the Commissioner of the General Land Office may require the authorities of such town, and it shall be lawful for them to elect what portion of said lands, in compact form and embracing the actual site of the municipal occupation and improvement, shall be withheld from pre-emption and homestead entry; and thereafter the residue of such lands shall be open to disposal under the homestead and pre-emption laws. And upon default of said town authorities to make such selection within sixty days after notification by the Commissioner, he may direct testimony respecting the actual location and extent of said improvements to be taken by the register and the receiver of the district in which such town may be situated; and, upon receipt of the same, he may determine and set off the proper site according to Section 1 of this act, and declare the remaining lands open to settlement and entry under the homestead and pre-emption laws."

The amendments reported by the committee were as follows:

In lines 10 and 11 of the first section strike out the words "solely and exclusively."

Add to the third section of the bill the following:

And it shall be the duty of the secretary of each of the Territories of the United States to furnish the surveyor general of the Territory, for the use of the United States, a copy duly certified of every act of the Legislature of the Territory incorporating any city or town, the same to be forwarded by such secretary to the surveyor-general within one month from the date of its approval.

Add the following section:

SEC. 4. It shall be lawful for any town which has made, or may hereafter make, entry of less than the maximum quantity of lands named in section 2389 of the Revised Statutes, to make such additional entry or entries of contiguous tracts, which may be occupied for town purposes as, when added to the entry or entries therefor made, will not exceed twenty-five hundred and sixty acres: *Provided*, That such additional entry shall not, together with all private entries, be in excess of the area to which the town may be entitled at the date of the additional entry by virtue of its population as prescribed in the said section 2389.

Mr. CROUNSE. Mr. Speaker, as will be seen by reference to the laws relating to pre-emption and homestead entries upon the public lands of the United States, certain lands are excluded from the operation of those laws. Among these are "lands included within the limits of any incorporated town, or selected as the site of a city or town."

The laws respecting the incorporation of towns and cities within the several States and Territories which contain public lands are enacted by the Legislatures of such States and Territories. The limits of any city may be more or less extended as the special or general laws referred to may permit, and in some instances to which my attention has been directed they have been swelled beyond all propriety or any possible need for municipal purposes. The abuse of which I speak obtains more particularly in the Territory of Utah. Much of the legislation there for years is made up of charters to local municipalities and grants of special privileges of this kind.

Here is a list handed me of cities incorporated by the Legislature of Utah from time to time since the organization of that Territory, and as nearly as may be estimated the area of territory included in each:

	Square Miles.
Parowan City	25
Millard City	36
Tooele City	9
Saint George City	35
Beaver City	36
Fillmore City	36
Grantsville City	18
Coalville City	20
Deseret City	36
Smithfield City	16
Franklin City	18
Hyrum City	9
Mendon City	9
Willard City	6
Washington	20
Cedar City	36
Lehi City	16
American Fork	16
Pleasant Grove	40
Provo Grove	35
Springville Grove	25
Spanish Fork	30
Payson Fork	25
Manti Fork	16
Salt Lake Fork	7
Nephi Fork	16
Alpine Fork	4
Ogden Fork	20
Logan Fork	16
Wellsville Fork	16
Moroni Fork	40
Brigham Fork	12
Richmond Fork	16
Kaysville Fork	18
Ephraim Fork	12
Mount Pleasant	16
Spring Fork	16

With but few exceptions the population of these cities must be quite insignificant, and for which a few acres in each would suffice to meet all demands for actual municipal purposes. Still here are something like seven hundred and fifty square miles of public domain, embracing a large portion of the lands there susceptible of cultivation, brought within incorporated limits and over which are extended municipal laws and regulations.

Now the construction given to the law denies the right of any one to enter any portion of any such town site, notwithstanding it may be unoccupied and not used or needed for municipal purposes. Such is the decision of the courts and such is the holding of the Interior Department.

A case of some importance, involving this question arose in my State, that of Root *vs.* Shields, and was decided by Mr. Justice Miller, of the United States Supreme Court, whose opinion may be found in 1 Woolworth's Circuit Court Reports. I will not stop to read it in full, but will incorporate it in my remarks as they shall be printed in the *Record*:

1. The city was incorporated, and these lands included within the corporate limits in February, 1857.

2. Shields had no pre-emption claim to them prior to September, 1857.

3. The act granting to him such right, if any he had, provides that a party of the character therein described may pre-empt any portion of the public lands, except such as are included within the limits of an incorporated city. It does not need a single word to show that the law, on its face, does not authorize a pre-emption entry o the lands here in question. But it is insisted, on behalf of the defendants, that this exception in the law is inoperative here. One reason alleged is that the mischiefs of such a provision are so serious that Congress could not have intended the effects which would follow. It is said that the State or territorial Legislature, in which rests the authority of incorporating cities, might, by unduly extending their limits, exclude large bodies of land fit only for agricultural purposes from the beneficent operations of the pre-emption act, and defeat the object of Congress-

We do not stop to repeat what has been said a great many times of the duty of the court, when applying to a case a provision of a statute, the terms of which are clear and precise, and when urged to nullify it by considerations of mischief growing out of it. Here we think the mischiefs are imaginary rather than real. If the local legislature were so unwise as to endeavor to defeat the purposes of a law enacted for the benefit of its constituents, Congress could readily, and certainly would immediately, remedy the evil. And it is not conceivable that the local legislature would ever attempt any such thing.

The pre-emption law was enacted for the benefit of the settlers in the new States and Territories. It offers to that adventurous and worthy class of citizens the advantages of selecting and securing in advance of the speculator the more desirable tracts in the new region. And the uniform policy of the Land Department is to retain the public lands in such a situation for a long time, in order to give those who are willing to encounter the hardships and dangers of frontier life an opportunity to make selections and to settle upon them, and make payment for them at the minimum price before any portion of such lands are offered to purchasers in general. Accordingly such settlers constitute almost the whole body of citizens who settle in such regions. It is not conceivable that they would deliberately devise a measure which would defeat an enactment by which valuable privileges are secured to themselves, and by which the region of country in which they live would be populated and improved. Precisely this argument was urged in the case of Gilman *vs.* Philadelphia, 3 Wallace, 713, 731. It was held untenable there, for the reasons indicated above.

It is insisted that the clause in the law containing this exception is repealed by the provision in the act organizing the Territory, that its Legislature should not have authority to interfere with the primary disposal of the soil. It is said that if the Territorial Legislature can, by incorporating a city, withdraw the lands included within its limits from the privileges of pre-emption, it may and it does thereby interfere with the primary disposal of the soil. This argument is specious rather than sound. If the provision of the organic act has the effect claimed, it is because it repeals the provision of the pre-emption law by implication. Between these two provisions there is no such repugnance that they cannot both stand. So that we cannot imply a repeal of the former by the latter. (United States *vs.* Ten thousand Cigars, *ante*.)

This provision in the act is the same as is found in most of the acts admitting new States into the Union. It is intended to withdraw from the local legislatures some special matter of general concernment, and indicates a settled policy in respect thereof.

In 1802, in the act admitting Louisiana, the words used were, "They," that is, the people of the new State, "forever disclaim all right or title to the waste or unappropriated lands lying within the said Territory; and the same shall be and remain at the sole and entire disposition of the United States." (2 Statutes at Large, 642). And the very phrase here employed by Congress appears in the act for the admission of Michigan, passed on the 15th of June, 1836, (5 Statutes at large, 59) and will be found in all similar acts since passed. Having its origin in some reason of general application, it has been felt as a necessary, and adopted as an approved, provision in the legislation of Congress.

One or two considerations will disclose this. To incorporate a city located on the public lands, however contracted its limits, is to withdraw from the operation of the pre-emption law lands included within them. If including public lands within the limits of an incorporated city is an interference with the primary disposal of the soil, then the new States cannot pass an act incorporating a city located on the public lands. But this power in the States was never denied. It has always been exercised by them exclusively of the Federal Government. Indeed, the legislation of Congress concedes the power. So it cannot be that incorporating a city on the public lands interferes with the primary disposal of the soil, even though it has the effect to withdraw the lands within its limits from the operation of the pre-emption law.

I have thus far spoken of the power of States, and am reminded that the charter of Omaha was enacted by a Territory. But we have already seen that the provision has its place in acts admitting States, as well as in acts organizing Territories; and that it is universally used on account of a general policy. So the argument in the one case is of equal force in the other. An act incorporating a city which is located on the public lands does not, by its own force, withdraw lands from pre-emption. That effect is produced by the congressional provision, and is remote, indirect, and only consequential.

These obvious considerations show very clearly that when Congress provided that the Territory should not interfere with the primary disposal of the soil, it did not intend to deny the authority to incorporate a city on the public lands. But this exception in the pre-emption law was not inserted with any view whatever to the extent of the corporate limits of a city, whether they should be reasonable or unreasonable. It was assumed that there was a class of lands which the local authorities would regard as more desirable for town occupation than for ag[illegible] Without any inquiry as to the correctness of the opinion on that subject of those who were on the ground, and without convenient means of answering such an inquiry, Congress deemed the short way the best way—to exclude them all from the operation of the act by a general rule. And when, with such a provision of statute before it, and with such obvious reasons for enacting it, Congress proceeded to organize the Territory with the clause which is before us, it is unreasonable to suppose that it intended to repeal or modify the former rule.

The clause in the organic act was intended to forbid the Territorial Legislature passing any law to dispose of the public lands as if on its own authority, or intermeddling with the mode by which the General Government should dispose of them, or assuming any authority or jurisdiction in respect of that business. It was not intended to deny authority to pass a law which the Territory alone could intelligently enact.

Clearly the position of the defendants on this ground is untenable.

But we are met by still another reason against giving effect to the exception in the pre-emption law. It is that the act of May 23, 1844, (5 Statutes at Large, 657,) restricts the corporate limits of a city to three hundred and twenty acres. All that that act provides, so far as the matter here in hand is concerned, is that any portion of the public land actually occupied as a town site may, to the extent of three hundred and twenty acres, be by the corporate authorities entered at the proper land office, and at the minimum price, in trust for the occupants. Prior to the passage of that act there was no mode provided for the occupants of such towns acquiring their titles, except at public sales.

The public sales of lands are often delayed long after a large section of territory has been opened for settlement. This is in order to enable settlers to enjoy the preference in acquiring the more valuable tracts. And these sales are made in parcels of not less than forty acres each, and therefore do not afford an appropriate means to claimants of small lots for acquiring title thereto. Congress accordingly provided this mode of relief to such parties, expressly restricting the advantages which it granted to lands actually occupied, and to three hundred and twenty acres. The status of the remaining lands within the corporate limits was untouched. They could not be entered under this act, nor could they any more after than before the passage of it be pre-empted by an individual. The title to them could only be acquired at public sale.

No one of the reasons urged on behalf of the defendants against giving effect here to the clear and express provision of the law, that lands within the limits of an incorporated city should not be subject to pre-emption are tenable. But if we look to the policy of the provision, we are led to the same conclusion.

Whenever a town springs up upon the public lands, adjoining lands appreciate in value. The reasons are obvious, and the fact is well known. So, too, when a railroad is built through a section of country the same result follows. So, too, in respect of lands which have been reserved for the use of an Indian tribe, when the Indian title is extinguished, the same may be said. While such lands are held as a reserve, population flows up to their boundaries and is there staid; it of course constantly grows more and more dense, so that when the reserve is vacated, the lands have increased in value, and are always eagerly sought after. The other classes of lands mentioned in the exception, as for instance those on which are situated any known salines or mines, have some intrinsic value above others.

Now all these classes of lands are excepted from the operation of the act, and for the one common and obvious reason, that being of special value, the Government desires to retain the advantage of their appreciation, and is unwilling that any individual, because of a priority of settlement, which certainly can be of but brief duration, should, to the exclusion of others equally meritorious, reap benefits which he did not sow.

This is as true of lands within the limits of an incorporated city as of any other of the classes mentioned in the exception. And it is no answer to this view to suggest that