

THE RIGHT OF WAY.

The question as to whether the public has rights over the claims of settlers on the public domain, was a question propounded by E. W. McDaniel, county attorney for Sevier county, to the attorney general. The correspondence is as follows:

I beg to acknowledge receipt of your favor of recent date containing the following: First—Where a county road over unappropriated public lands was laid out and used by the public for ten years prior to the application of a homesteader to enter the same and upon which poll tax had been expended or repairs made under the direction of the road supervisor but of which no formal dedication was ever made, is there a sufficient dedication to hold the same as against said homesteader? You also submit a series of questions relating to the same subject, differing only in some of the facts stated, but all involving the question as to what constitutes a dedication of a public highway.

An answer to your first question in full will necessarily furnish the information sought in the other inquiries of your communication. Your attention is directed to section 2,477 of the revised statutes of the United States enacted by Congress in July, 1866, providing as follows:

"The right of way for the construction of highways over public lands not reserved for public uses, is hereby granted." See page 219, volume 1, of the code of 1888. By the terms of the foregoing a grant is made to the public of rights of way over "public lands not reserved for public uses." There must be an acceptance of this grant evidenced by some action of a corporate body duly authorized thereto.

Generally speaking, as against the sovereign government, the doctrine of adverse possession or title by prescription can have no force, and the acquiescence of the government for any number of years in the use of its land for highways would be no evidence of dedication on its part. To determine what will amount to a dedication of a highway reference must be had to the provisions of our code. Therein we find the following: "Section 2,067: All roads * * * which are now used by the public and have been declared to be highways by the county courts and municipal corporations within their respective jurisdictions, or which may hereafter be so declared, shall be deemed and taken to be public highways." Section 2,068 provides, "roads * * *

* * * laid out and recorded by order of the county courts or municipal corporations within their respective jurisdictions are public highways. Section 2,072, subdivision 2, in prescribing the duties of county courts, making it their duty to 'cause to be surveyed, viewed, laid out, recorded, opened, maintained and worked, such public highways as are necessary for public convenience.'

By a perusal of the foregoing law it will be observed that certain proceedings are made requisite on the part of the county court in order to validate the appropriation of land for highways, and which proceedings, when had and properly recorded by the county clerk as provided in section 2,073, are sufficient evidence of appropriation on the part of the county, and of dedication on the part of the government (if the highways be over public land).

In your communication you use the term 'county road.' It is assumed from this that the county court has in all respects complied with the law hereinbefore set out. If this presumption is correct, I am of opinion that such com-

pliance operated as an acceptance of the dedication made by act of Congress referred to and that thereby the public acquired an easement in such land of which it could not be divested by a patent of the United States issued to a homesteader whose entry of said land was made subsequent to the acceptance of such dedication. And that a patent issued in the case suggested by the United States would be held subject to the easement acquired by the public in the land for its use as a public highway.

In section 2066 it is provided that "all roads * * * laid out or erected by others than the public and dedicated or abandoned to the use of the public, are highways. A highway shall be deemed and taken as dedicated and abandoned to the use of the public when it has been continuously and uninterruptedly used as a public thoroughfare for a period of ten years."

It will be seen that ten years is the time fixed by statute, after which a dedication as against all the world, except the sovereign government, will be conclusively presumed.

The use of a highway for any number of years less than ten, whether expenditures of labor and poll taxes have been made thereon or not, could not avail to vest title in the public by adverse possession. I am of the opinion that the expenditure of labor and poll tax or the making of repairs upon roads are not conditions precedent to dedication, and a road may become a public highway without the expenditure of either thereon, and that a highway, except as against the general government, is dedicated and abandoned to the public when the same has been continuously and uninterruptedly used as a public thoroughfare for a period of not less than ten years, provided the user has been adverse, and not by the permission of the owner of the land.

"I am further of opinion that in order to the determination of what shall constitute a sufficient dedication, the records of the county court must be consulted. If it shall appear therefrom that a substantial compliance with the law governing statutory dedication has been had, then such way shall be deemed and taken to be a public highway, whether over public or other lands, and that the county's right is paramount as against the homesteader's in any case where the land was entered subsequent to the county's appropriation as hereinbefore suggested.

PIONEER, CANTATA.

SALT LAKE CITY, April 14, 1897.

Your kind and considerate editorial on "Cantata" for the Jubilee is all in the right vein, it has not one faint, it is at least six months too late. Three months is not sufficient for the most capable of masters to write a fitting work for such an event, or to set the libretto awarded the prize at the Elated to anything like fitting music. Then even if it were written and ready for the typeset or the force of music typewriters at both the NEWS office and Juvenile Instructor office would require that amount of time to print such a work. Then about six months would be required for the singers to master it. Unfortunately, it has been overlooked too long, and the event must pass by with nothing more than an ode at most. It will be no slight matter even to prepare a work on that scale now, should the committee decide on having one. Mr. Stephens has set much of his cantata to music, though you are mistaken in the impression that it was stipulated

that the music should be forthcoming. The prize was offered for the words only, they having to be suitable for a musical setting. A thousand dollars would be scarcely an adequate remuneration for a musical setting to such an extended work, and the Cambrians have not been in financial conditions to offer any such sum. Something of a simpler order would certainly be acceptable for Sunday school work as you suggest, though there is hardly time even for that now. It is a pity the matter was not agitated before. It is the preparation of such art works that require consideration one, two or three years before such important events, their magnitude is not understood sufficiently by people generally. A musical work of a high order requires much labor as well as genius to create, and when created a large force of vocal and instrumental workers drilled to present it, involving great expense. Gounod, the French composer, was paid thirty thousand francs for his oratorio *The Redemption*, a work no more extended than a fitting setting of Mr. Stephens's Pioneer Cantata should be, and we want no ordinary or inferior musical art work to commemorate the glorious Pioneers. So unfortunately it must pass on to the Centennial celebration. Let us hope Mr. Stephens will finish his work at his leisure, and that it will be one deserving a hearing then, though be doubtless will not be in the flesh to hear it.

As to the song suggestion, there are a number of songs within reach. They ought to be immediately printed and scattered and got ready for the occasion. Mr. Stephens is again a veritable Pioneer in this. His song, "The Pioneers," has been in print for fifteen years, and can be readily reproduced. Also his Pioneer Day chorus, "Hail to the man," just the thing for ordinary choirs. Then "My mountain home" was long a household song, and can be reviewed—with "My valley home" and "God bless our mountain home," "Gathered Saints," "Vales of Deseret," and a number of others that bear directly on our life in the mountains to which the Pioneers led us. It is perhaps remarkable that long before he was prominent before the public Mr. Stephens had given us more "home songs" than all others combined; and now they and any others available should be brought out and put on sale that they may be got ready for our semi-centennial celebration throughout the State. It is the nearest we can come to doing musical and poetical justice to the occasion.

Musically, what should have been decided upon at least six months ago, is only now being considered. What has the music committee been about?

CAMBRIAN.

The militia bicycle corps recently organized by Captain William Johnson of Company A, Stockton, Cal., made its first appearance on the street Monday, and made a fine showing. The men executed a series of maneuvers on their wheels and moved with a precision that was surprising. They wore the regular National Guard uniform and carried the ordinary marching weight. This is the first corps of its kind in California.