THE EVENING NEWS.

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EDITOR AND PUBLISHER.

Thursday, - - May, 11, 1871.

THE *Pacific Rural Press* discusses the the question whether California's mechanics can or cannot successfully compete with the mechanics of the Eastern States. In contrasting the Soule improved farm wagon, manufactured in California, with the Studebaker farm wagon, candor and truth compels the *Press* to say that in general style, finish and adaptation to the purposes for which they are made, the California is the better wagon. It proceeds to state the points upon which the California wagon-makers base their claim to the superiority of the California-made wagon over the imported:

1st. That the timber used in the California-made wagons being almost wholly obtained from the Atlantic seaboard States, and a very large proportion of it of second growth, is much better than that used in the imported wagons, which is obtained from the western forests where the wagons are made, and which is well known to be from large trees of the first growth of timber.

"2d. That even if the timber used in the wagons was of equal quality, which they deny, the California wagons, being put up in a drier climate, and of timber that has for a long time been subject to the action of that dry climate, must necessarily be, and are, much more serviceable and more valuable than wagons put together in the comparatively damp climate of the Atlantic States. Especially so, if the wagons are to be used in the dry atmosphere, and dry and hot soils of California, Nevada, Utah, Montana, Arizona and New Mexico.

3d. That the experience of the California mechanics on the ground, and having come from, and having brought with them the skill and taste of all parts of the world, has given them a better understanding of the special wants and peculiar necessities of the farmers and others who use wagons on this coast, and has the better prepared them to meet those wants and necessities in all that relates to the strength, proportion, adaptability and durability of wagons to be used here or in a similar climate."

All these points apply with nearly equal force to wagons manufactured in this Territory. The day will come, we doubt not, when wagons and carriages will be manufactured here that will be better adapted in every respect for the wants of this region than imported wagons. Already the firm of Naylor Bro's. in this city is gaining a reputation in this branch that we hope they will continue to enhance and maintain. They are prudent, energetic, business men, and have laid a good foundation, when their means is taken into consideration, for a fine, thrifty business in the future. But to compete successfully with Eastern manufacturers and stop the importation of wagons into this Territory, more capital is needed, and to obtain this co-operation might be advantageously brought to bear. This is the principle, though not called by that name, which the *Press* urges upon the attention of wagon makers in California. It says, speaking of the Eastern wagon manufacturers:

"Their capital, skill and energy is united, ours is divided. We cannot if we would, and we would not if we could, reduce them to our unenviable position. The only chance to get even with them and to become their successful rivals in supplying this great future trade of the Pacific Coast, is to do as they have done. Break up our little one-man shops by the wayside, unite our skill, obtain labor saving machines, classify and economize our labor, command, and obtain, as we then can, unlimited capital, and first-class business capacity to manage it. Being in such a position, and in possession of equal facilities in these respects, united with the advantages of the points claimed above by our mechanics, would there be any need of fear as to imported wagons?"

A plan of this kind, adopted and carried out in Utah, would enable her mechanics to successfully compete with those who reside in the East and to command the market here.

PAUL DU CHAILLU, the great American traveler and explorer, whose books of travel and adventure in the equatorial regions of Africa and other tropical countries, are known, admired and greedily read by the young of every portion of the world, true to his instincts, is about to resume his explorations. He is going to have a change of scene and circumstance, just for the sake of variety probably, for instead of equatorial or tropical regions with their intense and everlasting heat, he is going to the northern and probably the artic regions. His destination in his coming travels is the more northern portions of Europe, including Lapland, Sweden and Norway. Many portions of the new field, chosen by the intrepid Paul for his future operations, are but little known; and if he can endure privation and difficulty as well in the frigid as he has done in the torrid zone, the result of his contemplated explorations will probably be a large increase of information respecting the realms of the fabled deities, Woodin and Thor, and the manners, habits customs and modes of life of the various Scandinavian and northern Europeans.

A MOST exciting balloon ascent took place about two weeks since at Dayton, O. the aeronaut being Professor Turpey, of Grady's circus. His balloon was inflated with hot air by means of a furnace set in the ground, the chimney inserted in the mouth of the balloon, being a section of a steam boiler. Just after the ropes were loosed and the balloon cleared the tube the flame flashed fiercely and set fire to it.

Suspended from the burning air ship was a trapeze, upon which Professor Torrey, seemingly heedless of the danger of his position, continued to perform various feats, hanging by one hand then by one foot, &c., the wind blowing almost a gale at the time. There were thousands of people present, who were thrilled with fear at the sight. When about a thousand feet high, the balloon began to descend rapidly, and when within a short distance of the earth, caught in the trapeze of a tree. The aeronaut taking advantage of this swung from the trapeze and caught in one of the branches. This probably saved his life, although the branch gave way and he fell to the ground, his only injury being a sprained ankle. The balloon alighted about half a mile from the starting point, considerably damaged by fire, and torn by its contact with the branches of the tree in its descent.

A LATE number of the Jackson (Tenn.) *Whig* contains the account of a strange and frightful being which has been observed for several weeks between Sobby and Crainsville, on what is called Piney, in McNairy county, Tennessee. The *Whig* says of it that:

"He is said to be seven feet high, and possessed of great muscular power. His eyes are unusually large and fiery red; his hair hangs in a tangled and matted mass of jet below his waist and his beard reaches below his middle. His entire body is covered with hair, and his whole aspect is most frightful. He shuns the sight of men, but approaches with wild and horrid screams of delight every woman who is unaccompanied by a man. He sometimes with great caution, approaches houses, and should he see a man, he runs away with astonishing swiftness, leaping the tallest fences with the ease of a deer, defying alike the pursuit of men and dogs. He has frightened several women by attempting to carry them off, as well as by his horrid aspect, and the whole country around Sobby is in consternation. The citizens are now scouring the woods, and are determined either to capture or drive off the monster."

NOT MAJOR BIRD.—In the item in yesterday's NEWS, headed "Not Sufficient," we inadvertantly applied the title of Major to the man named Bird, therein alluded to. His name is plain Bird without the Major. This explanation is necessary in justice to Major Bird of the revenue office. None, however, who are acquainted with that gentleman would suppose it to be him.

Correspondence.

SALT LAKE CITY, May 1, 1871.

Editor of News:—Sir.—In my letter of the 20th of April, I said I should resume the subject, and endeavor to show from the laws of the United States, that Congress never did intend, and never could have intended, the result which my remarks showed must follow, if these laws of the United States are applicable to Utah. I now resume the subject, and add, that since writing the communication I have re-examined the circular and instructions, and find it proper for me, in this letter, to refer to both in connection with the laws of Congress as they now exist. I further add, that from the earliest period of the existence of the United States, in their capacity as such, it has been the policy of the government, to encourage, not to discourage, new settlements, and to aid the settlers in opening up the country, thus rendering it productive. This, I assert, without as present citing any authority. If however, any such authority be needed, it will be found in the uniform practice of the government, and in the numerous acts of Congress granting, and, from time to to time, extending preemption rights, thus holding out to the citizens an encouragement of ultimately obtaining the lands in fee. As this notice applies to this Territory it is obviously proper to notice the fact that from July, 1847 the time of the first settlement here, to September 1850, the time the Organic Act was approved, a period of a little more than three years, no laws of the United States, civil or criminal, had any force in this Territory. By this act, see Section 17, the Constitution and laws of the United States were extended over and declared to be in force here, so far as the same or any provisions thereof may be applicable. From this time, by the force of this Act, the laws, including the decisions of the courts above referred to, if applicable, but not otherwise, have been in force here as elsewhere in the United States. The question of applicability of laws is to be decided by the courts. I concede, but in making these decisions, the laws of Nature and particularly *the aspects* of Nature are to be taken into consideration.

If we consider the aspects of nature, and apply them to this Territory, which we are forced to do whether we fully understand them or not, we find ourselves compelled, either to turn savages and get our living by a wandering life, to leave the country, or to go upon lands not our own and take therefrom the water by constructing artificial channels and therein turn it on to other lands also not our own; and thus, by human effort, supply water, an article which had been withheld by natural causes, and an article, without which it would have been, as I have before said, *impossible to cultivate the soil*. Here then is one instance of an impossibility of observing the laws above mentioned; and as the settlement on the land could not have been made for the want of water, and the water could not have been obtained without a *tort*, if the same rule is to be observed here as is observed in the Atlantic States.

Again. This country, though not so cold as many in the East, is yet so cold as to prohibit all settlements without firewood. This wood was not on the land, but it was in the canyons. If, therefore, we are intended to be withheld, it constituted another prohibition against settling the country, as settlements could not be made without it. Here then is another impossibility to be overcome. The same remarks will apply to building timber and constitute a third impossibility. Impossibilities are not required *in law* to be overcome. Constitutions, statutes, and decisions of courts, when *impossible of execution* are themselves void. In this case I call them inapplicable, not void.

By the Organic Act there were, in addition to the clauses I have before quoted, other clauses to be noticed. A Territory was constituted, and a Legislative Assembly was provided with authority to legislate on all *rightful subjects of legislation*. (See the Act.) What more explicit language can be used to a people who at the time were actually settled by government land, than this to authorize them to remain there, and settle the country? If one individual authorized another, though gratuitously, to settle and live on his land, could he, afterward, maintain a suit in trespass against him for so doing? I think not. Then what becomes of the action for a tort? Where is it? The same rule applies to the United States, to a State, a Territory, and to less divisions, such as counties, cities and towns owning lands. The reason is, there is an authority given and it is to be presumed within that authority he expressed or implied, or whether it is gratuitous, or given for a valuable consideration. The government having been organized by Congress, with it came the maxim that the salvation of the people is the paramount law. Solon pupils expressed the same sentiment. See Broom's Legal Maxims 1. 3, Taylor's Law Dictionary, 124, 146.—131. This salvation, this necessity is seen, felt and realized here, though it may have escaped the observation of the Department at Washington. Be that as it may with them, with us it was then and it still is a mandate, was and which could not and cannot now be disobeyed. If the time shall ever come when wood and timber can be grown in these valleys, sufficient for the inhabitants, this *salus*, this necessitas will cease, but not till then. Bouvier says a maxim is an established principle or proposition. A principle of law universally admitted as being just and consonant with reason.

He also says maxims in law are somewhat like axioms in geometry. XI Rep. Cam. 88, they are principles and authorities and a part of the general customs or common or unwritten law, and are of the same strength as acts of Parliament. Maxims of law are holden for law. The application of the maxims to the case is the only difficulty.

I now call attention to such acts of the Congress as have a bearing on this very important inquiry. In so doing I first take that constitution which was noticed in the circular under No. 5, relating to swamp lands. The language of the act was "swamp" and "overflowed lands," which may be or not dried and fit for cultivation. These were granted to the States in which they were situated, first Louisiana had been admitted, 2 Statutes at Large, 322, 310, 328. Ohio was admitted March 1st, 1803, the other states by law from the control of Congress and vested in the people the lands in the territory of Utah have been working similarly, both are unfit for cultivation. In other respects they are dissimilar; there the lands are low and swampy; here they are high and difficult of access. The material part is they are both unfit for cultivation. See 2 Statutes at Large, 445, March 3, 1807. Congress passed a law prohibiting settlements on lands ceded or secured to the United States by any foreign government or by any State not previously sold, ceded or leased by the United States until thereto duly authorized by law. I call attention to this act for the reason that it has an indirect bearing on this matter. In this it contemplated an authority by law of settling on the lands of the United States; and, as I have before said, the Organic Act must be construed to be an authority of law to explore, settle and occupy the lands here; and in the absence of Congressional legislation on the subject the Legislative Assembly of the Territory, by virtue of its general legislative authority, could regulate this exploration, occupation and settlement.

In May, 1830, nine years after Attorney General Wirt expressed the opinion above referred to, Congress passed a pre-emption act. See Sec. 1 Brightley's Digest 469, Sec. 64; 4 Statutes at large 420. This act provided for the purchase of the lands of the United States by persons who were in the ACTUAL *occupation* and occupancy of such lands. From that time until September 4, 1841, thirty years ago and twenty years after Attorney General Wirt expressed his opinion, and ten years after the passage of the act before quoted, making it penal to cut timber on the public lands, several laws were passed on the same subject, and on the 4th September 1841, the present act was approved, thus settling the policy of the United States and establishing the right, under certain circumstances and conditions, for certain classes of people to actually occupy the lands of the United States with the right of ultimately purchasing the same. See 1 Brightley's Digest 472 Sec. 83. All these require an actual occupancy, an actual settlement on the land, and the last named act requires a dwelling house to be actually built thereon.

Before passing to the homestead act, I refer again to the opinions of the Attorney Generals, and to the act of Congress, making it penal to cut timber on the lands. None of the pre-emption acts refer to the acts of March 2, 1831, making it penal to cut timber, nor do they exempt, in terms from its operation, such settlers; nor do they divest the title of the United States and vest it in the *bona fide* occupant. On the contrary, the fee remains subject to being divested on the compliance with the laws as to payment and receiving the patent. In 1833, two years after the passage of the penal act, and three years after the passage of the pre-emption act of 1830, Attorney General Taney referred to the opinion of Attorney General Wirt and concurred therein; but he was silent as to the effect the penal and pre-emption acts would have tending to qualify that opinion concerning lands actually occupied by honest settlers. In 1845, twelve years later, and four years after the act of Sept. 4, 1841, Attorney General Mason referred to the pre-emption settlers and recognized their rights. This recognition is not directly found in either of these acts, yet it is evidently, by a necessary implication, so to be construed when all the acts are taken into consideration. The homestead act also requires an actual occupancy and cultivation, (See Hawe's Manual 174,) and an actual residence for five years.

By the act of Congress, approved July 26, 1866, entitled "An Act granting the right of way to ditch and canal owners over public lands and for other purposes," it is provided that the *mineral lands* of the *public domain*, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States and subject to the local customs and rules of miners. It is further provided in Sec. 8 that the right of way for the construction of highways over the public lands, not reserved for public uses, is hereby granted. And in Sec 9, that whenever, by priority of possession of rights to the use of water for *mining, agriculture, manufacturing or other purposes* have vested and accrued, and the same are recognised and acknowledged by the local customs, laws, and decisions of courts, the possessors and owners of *such vested rights* shall be maintained and protected in the same, and right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed, provided, however, that whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable.

By reference to my former remarks it will be perceived that I said, no clearer principle of law existed, or one which was more firmly sustained by reason, by logic and by common law, than for one individual without the consent, expressed or implied of another to go upon his land, and take therefrom soil, mineral substance, water, timber, or do other damage than that, a civil suit for so doing might be maintained; and that this applied to the United States when they were owners of the land. I now state that the converse of the proposition is also true. If, therefore, the United States, expressly or impliedly, authorize or permit the citizens or other persons to go upon and settle their land, whether for mining agricultural or manufacturing purposes, and take therefrom timber, minerals, water, or use other means to settle and occupy the same, that no civil suit for a *torp* can thereafter be maintained against them for so doing; on the contrary, *vested rights accrue to the settlers*. And this doctrine we find expressly declared in the Act of July 26, 1866, in which these *rights* are *declared to be vested rights*, and if vested they are such as neither *Congress*, the *President* or the *officers of the law* or the courts can lawfully take from them. It is the duty of the officers of the law not to make the law but to enforce it; and the duty of the courts when the case is before them, to decide what the law is and render judgment accordingly.

In my previous statements you remember I expressly named, as being within the doctrine laid down by Attorney-General Wirt in his opinion of 1831, coal, timber of all kinds, building rocks, diverting water from its natural channel, taking soil or minerals, &c. &c. The United States, even including the building of dams and using water, all which, as the law stood in 1831, would be correct. In 1845, Attorney-General Mason saw fit to concur with Attorney-General Wirt, with the qualification of excluding from his opinion pre-emption, or those who, in good faith, had settled upon the land. This became the change of the law after 1831 and before 1845. Since 1845 a greater change has taken place. The country embracing the Territory of Gaston Rock, Elizabeth, Indiana, Idaho, Utah Territory, has been explored. In much of this country precious metals are found. A large extent of this has no timber, except on land wholly unfit for cultivation, as I have before stated; and on this the timber is very poor in quality and quite insufficient in quantity. The tillable land requires irrigation. To meet this new set of circumstances, Congress, following the settlers and the public mind, has passed these laws to meet the requirements of the people. In the mining districts, where no water, wood and timber, without wood and timber the place cannot be cultivated, nor the mines successfully worked, nor manufactories carried on. With wood and timber all disappears, and industry, with the other privileges named in the statute, can and will flourish. Is it, therefore, reasonable to suppose that Congress intended to withhold the use of wood and timber from the settlers on the public domain? I think not. Attorney-Generals Wirt, Taney and Mason, if they were now giving an opinion, based upon the laws in force at the times they wrote, considered in connection with the varied circumstances I have related, and the laws which have since been passed, would adopt the doctrine indicated by Attorney-General Mason, excepting from it the rights of pre-emptions. If so, then does it not follow that the rights of miners, the rights of manufacturers and the rights of agriculturists will also be taken in consideration when they view the laws in connection with the circumstances of the country, and the laws which have been passed,