AN ASTOUNDING DECISION.

Salt Lake City, Feb. 12, 1898.

"Government by injunction" has become a trite phrase in the American vernacular. The judicial arm of our government system has become potent in a manner not contemplated when the nation was organized. The power of injunction was vested in courts for the protection of the citizen, to prevent injustice and arrest the force of might when exercised against right. But of late years that power has been extended far beyond the sphere which to the common mind appears to be legitimate. This has caused the widespread feeling which has found expression in the words which commence this communication.

Government by injunction is not the only form in which the rightful authority of courts may be perverted. Injunctions are issued not infrequently when the conditions complained of do not warrant such methods of procedure, and when the judicial mind is warped by bias or is but partly informed as to the facts, great injustice is sometimes the consequence. The utmost care, patience and fairness ought to be exercised by the judiciary when invoked to stretch forth its mighty arm, in order to prevent an individual, an association or a corporation from exercising those rights and privileges which are necessary to its proper liberty, if not to its very existence. Such extreme force should never be set in motion when milder means may be employed in the support of justice and the promotion of equity.

A decision was rendered by the Supreme court of Utah, a week ago, which has occasioned so much amazement and alarm among a host of agriculturists, as to call for a protest from the general public. While it is conceded that the decisions of courts should be regarded with respect, and that, when final, they must be obeyed, yet it must be admitted that they are open to public criticism, and that when they effect a manifest injustice, they may become objects of public indignation. It must not be forgotten that every department of our government is for the public service. The whole system is a creation of the people, by the people and for the people. The judicial, as well as the executive and the legislative branches, is amenable to the power that created it. "The divinity that doth hedge a king" forms no halo around the judge more than about the legislator or the executive officer. When people are hurt, they may cry out, no matter from whence comes the injury; and when wrong is perpetrated it may be lawfully exposed and popularly denounced. In referring to the case in point, then, no law is thereby violated and no public offense is committed. Any one has a right to dissent from a ruling of a court to show its errors, to deplore its effects and to voice public opinion as to its inequity. The general feeling in legal circles, as well as among the masses of the people who are acquainted with the facts, is that the decision was an egregious blunder; the sufferers call it "a terrible outrage."

The North Point Consolidated Irrigation Co. some time ago sued for an injunction against the Utah and Salt Lake company, the South Jordan Canal company, the North Jordan Irrigation company, the city of Salt Lake and the county of Salt Lake, to prevent the maintenance of a drain ditch which had been constructed to carry off the natural drainage and seepage from the higher lands in the southwestern and western parts of the county, through Hunter, Silver, Durst, Potter, Decker lakes into the White lake, and also to prevent the use for similar purposes of the Surplus canal, running from the neighborhood of Twelfth South street, in a northwesterly direction, to the White Lake, and thence on towards the Salt Lake. The complaining company claimed a right to the use of the water from the surplus canal, by virtue of an alleged grant from the surplus canal company to the North Point Canal company, the predecessor of the plaintiff, for irrigation purposes, and also that the lands watered by the system used by plaintiff had been damaged and rendered worthless because of mineral substances carried through the drainage ditch and the Surplus canal, which have become a public nuisance. It was contended also by the plaintiff company that the Surplus canal was constructed for irrigation purposes rather than for drainage; also that the drainage ditch on the west had been enlarged since the time of the alleged grant from the Surplus canal company to the North Point Irrigation company. The purpose in view in the planting of this suit was to recover damages said to have been caused by the deposits of alkaline matter on the lands watered by the irrigation system of the plaintiff company.

The defendant companies denied the existence of any legal grant to the plaintiff, and showed that even if such grant had been made it was and must have been of necessity subject to the prior right held by the defendant canal companies. The defendants further proved that the special purpose in the building of the surplus canal was for relieving the Jordan river of its surplus water in in over-flow seasons and for draining lands in the western part of the city, and to drain the entire slope of country as far to the north and west as the Sandridge, and that it was built and water turned into it in June, 1886. Salt Lake City and Salt Lake county joined with the property owners near the Jordan river for the construction of this surplus canal, Salt Lake City and Salt Lake county each contributing about $6,000 towards it. The alleged grant to the North Point Irrigation company was not legally executed and was not claimed to exist until after the construction and use of the Surplus canal. The drain ditch from the west was also constructed and used as early as June, 1886, and both were made to fad the natural drainage into the White Lake. The natural flow was from Hunter Lake into Durst Lake, thence into Silver Lake, thence into Porter Lake and so into Decker Lake. The natural drainage from Decker Lake was into a depression now called the Old Reservoir, thence into a slough, then on northerly into the White Lake and still farther north into Smith's Lake. The drainage ditch and the Surplus canal were used continuously for the purposes for which they were constructed until the application for an injunction was made and granted temporarily. The defendant companies also showed that the lands watered by the plaintiff's system were entirely worthless; that most of them at one time had been overflowed by waters from the Salt Lake; that they were thoroughly impregnated with alkaline matter; that years ago attempts to cultivate them had proved unsuccessful and the lands had to be abandoned; that they could not be leached because of the impossibility of drainage; that when pure water was applied to them, the effect was to gradually bring to the surface alkaline matter in the form of efflorescence, which was deadly to all vegetation; also that plaintiff company was charged with a large percentage of alkaline matter, that did not come from the drain ditch of the defendant companies; that the water conducted to them by the such nuisance as existed, was produced by the acts of the plaintiff company itself; and that no damages of any kind had resulted to the plaintiffs from the acts or works of the defendants.

After a temporary injunction had been issued against the defendants, the case was fully tried in the district court, before Judge Norrell, and by him decided in the latter part of April, 1897. His decision contains a complete resume of the whole cause. A large number of witnesses had been examined, a map of the country affected, with the several lakes, sloughs, drainage ditches, canals, etc., etc., had been presented, arguments pro and con had been heard, and the judge had held the matter for some time under advisement. The court decided that no legal grant had passed from the Surplus canal to the North Point Irrigation company; that even if such a deed had passed, the plaintiff took its privilege subject to all the rights of the defendant companies; that the defendant companies had used and enjoyed the right to discharge drainage water into the Surplus canal for the period of seven years adverse to plaintiff, and that this was a lawful use and enjoyment of their own property, without negligence or malice; there could be no doubt from the testimony that the main feature of the incorporation of the Surplus Canal company and the construction of its canal, was the drainage of the western portion of Salt Lake City and the land along the Jordan river; that this chief purpose was known to the plaintiff and that any privilege granted to take water from the Surplus canal was subjec first and always to the conditions for which the canal was constructed. The court further held that the water accumulated in the respective lakes which have been [illegible]med, was not surplus water, but water that had come down into them and the low basin about them from springs, percolation and seepage, from the high lands above; a condition inevitable from any irrigation system; that water had been running into those lakes and basins for many years, and following the natural drain-way to the White Lake, on to Smith Lake and finally into the Great Salt Lake. It was not water that had run to waste, but that which had been formed after the "prudent and careful exercise of the defendant's lawful right to so use it, and such as was excepted by statute from the penalty for forming pools and marshes." That there was a distinction between drainage and surplus water. The testimony showed that there had never been any surplus water from the defendant companies' canals, but that they had never been able to secure a sufficiency of water for irrigation purposes. The only surplus water from those canals passed out south of the Sandridge, and was conveyed back into the Jordan river. The canal known as the Surplus canal and the drain ditch from Decker Lake into White Lake were constructed for drainage, to carry off seepage and water from springs and precipitation and not surplus water, and the defendants had a right to discharge it into White Lake, through its natural drain-way, and to aid the flow by means of artificial channels. The defendant companies had openly continued the use of these avenues for a period of ten years, under a claim of right adverse to plaintiff, and it was too late now for plaintiff to complain. The preponderance of evidence, the court said, went to show that the enlargement of the drain ditch, in 1891, complained of by the plaintiff, was simply a cleaning out of the ditch by removing the grass and vegetation that had grown up and the earth that had dropped into it from the crumbling banks, and that the ditch was not made wider or deeper than the original ditch. As to the damage from the abundance of deleterious matter deposited on the plain-