Correspondence.

SALT LAKE CITY, May 1, 1871.

Editor of News:—Sir.—In my letter of the 26th 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 at 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 pre-emption 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 as 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 kanyons. If, therefore, wood was 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 on 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 immaterial whether that authority be 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. *Salus populi suprema lex est*; and *Necessitas inducit privilegium quoad Jura privita.* See Broom's Legal Maxims 1. 9. Taylor's law, Glossary 335. 472. II Bouvier's Law Dictionary, 124, 146.—135. 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, and one 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 Bl., Com. 68, 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 into consideration what was noticed in the circular under No. 5, relating to swamp lands. The language of the acts was "*swamp*" and "*over flowed lands,*" which may be or are found *unfit for cultivation.* These were granted to the States in which they were situated. See Lester's land laws, 542, 9 Statutes at Large, 352, 319, 520. One was approved March 2nd, 1849; the other, September 28th, 1850; hence they were excluded by law from the control of Congress and therefore excluded by the circular. These lands and the lands in the kanyons of Utah have this striking similarity: 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 ay 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 *cultivation* 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 law 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 eresrved 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 recognized 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, expressedor 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 *leeally 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 1821, coal, timber of all kinds, building roads, diverting water from its natural channel, taking soil or minerals from lands of the United States, even including the building of dams and using water, all which, as the law stood in 1821, would be correct. In 1845, Attorney-General Mason saw fit to concur with Attorney-General Wirt, with the qualification of excluding from its operation pre-emption, or those who, in good faith, had settled upon the land. This became the change of the law after 1821 and before 1845. Since 1845 a greater change has taken place. The country embraced in the treaty of Gaude Louk Hidalgo, which includes this Territory, has been obtained. 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 NECESSITIES of the people. In them they have named everything needed but wood and timber: without wood and timber the land cannot be cultivated, nor the mines successfully worked, nor manufactories carried on. With wood and timber all these classes of 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 in this mountainous region? And would 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, adopt the doctrine indicated by Attorney-General Mason, exempting from its operation 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 agriculturalists will also be exempt in countries like this, where neither wood nor timber grows, except by cultivation on any of the farming land? Do not the instructions of Nov. 4, 1870, in substance, carry out and sustain my view of the subject? That says: "You will discharge with energy the duty devolved upon you by the enclosed circular, having due regard to the RIGHTS OF HOMESTEAD AND PRE-EMPTION SETTLERS AND THE CIRCUMSTANCES OF THE COMMUNITY, REQUIRING A SUPPLY OF TIMBER FOR MINING, MANUFACTURING AND OTHER BUSINESS PURSUITS." This language is broad enough to include all the necessities of the people here, and in meaning, if not in direct words, includes the right of farmers and others to obtain their fuel and timber in the ordinary and usual method hitherto adopted for such purpose; else why use the terms OTHER BUSINESS PURSUITS? I see no necessity for infringing upon one part of the law of 1831, which prohibits the wanton destruction of the timber, and which prohibits its exportation, but cutting it for actual use here for MINING, MANUFACTURING AND FARMING PURPOSES CAN NOT, as I have said before, BE AVOIDED.

Sec. 7 of the circular says: "While thus liberal to the honest settler, you should be vigilant to detect and arrest the SPECULATOR, who, in the guise of a settler, may contemplate the SPOLIATION OF TIMBER; and, unless ARRESTED, might injure the PUBLIC INTEREST," keeping constantly in view the RIGHTS of the HONEST SETTER and the PREVENTION of SPOLIATIONS and WANTON DESTRUCTIONS. With this no fault can be found. If in any instance there has been here wanton destructions or spoliations, or exportations of timber, it has not fallen under my notice. On the contrary it has been, I am quite certain, the desire of the community here to preserve it for actual use. To accomplish this object, the Legislative Assembly, at an early day, placed timber in the cañons, as well as the water in the streams, within the control of the County Courts. This legislation has been before Congress for about twenty years without any objection on their part. The object of this was to preserve it, as the persons most interested and having the best information of its extent and of the means of access, would have its management.

With the aspect of the country in the Eastern States, where timber in sufficient quantities was to be found on every farm, it was good sense to require the pre-emptioner to take his fuel and timber from the land upon which he had made his declaratory statement; but with the aspect of the country here, where no timber exists, such a requirement, if not a direct insult is the quintessence of absurdity. Whatever property the United States own, is held in trust for the common good; here, to take the timber as above indicated, it goes to benefit the mass.

When the system of irrigation was commenced, and when the mining interest was being developed in California and in other places, infringements upon the lands of the United States for exploration and occupation, and to obtain water and fuel and highways, was a necessity. Notwithstanding this, as soon as the utility was established, Congress recognized the right and confirmed by law, as I have before shown, the interest thus acquired. If I am possibly wrong in my conclusions relating to fuel and timber here, there is no reasonable doubt but that Congress, so soon as the subject is brought to its notice, will confirm and establish this right in the same manner and with like effect as it confirmed and established the other rights. This being done, all these necessities will be overcome.

Yours truly,

Z. SNOW.

MORNING

Pacific Coast Dispatches.

SAN FRANCISCO, 11.—A destructive fire at San Bernardino at midnight on the 8th instant destroyed six buildings occupied by Ames & Co., Meyerstein & Newberg, B. C. Boren, O. J. Cox and H. Oliver. A large portion of the furniture and merchandise was saved. Five of the buildings with their contents were insured.

The Tucson, Arizona, *Citizen* of the 3d instant says the patience of the settlers has been remarkable, but the killing of four good citizens, in San Pedro, by Indians who have been fed and otherwise provided for at camp Grant, has exhausted it. There is no Indian reservation at Camp Grant, but a few hundred Apaches recently came in there, promised peace, were fed and recruited, and from thence went out to steal and murder. Having traced the guilty ones to their base of supplies some two weeks ago the citizens were determined to make their power felt, and on the 28th of April a few of them, aided by 100 Papago Indians started on their mission of revenge and self protection. Early on the 30th they dashed into the Indian camp, killing 85 and taking 28 children prisoners. One horse, recently stolen from farmer Smith, of Tucson, was captured; unbroken packages of centre primed rifle cartridges, and a breast pin worth 200 dollars, belonging to a woman recently killed at Tubac, were found on these Indians, making it a matter of certainty that these Indians killed L. B. Wooster and the woman on his farm.

DIED,

AT twenty-five minutes past nine, this morning (May 10th) MRS. JANE JENNINGS, wife of Brother Wm. Jennings, and youngest daughter of John and Mary Walker. Sister Jennings was born at Gingley on the Hill, Nottinghamshire, England, from whence she gathered in the season of 1850, was married to Bro. Jennings at St. Joseph, Mo., in the year 1851, and came to these valleys in the fall of 1852. She is the mother of 11 children, 6 of whom are now living, the last being just over two weeks old. From the time of the birth of her youngest child up to last Friday evening the deceased appeared to be doing as well as could be expected under the circumstances; at that time, after partaking of a little food, she was seized with vomiting, and for the next two days her retching was so continuous that but little if any food could be kept in her stomach. Her health had been seriously impaired upwards of a year ago, and at that time she suffered from a severe pain in her stomach. The disease from which she died is supposed to be a recurrence of her former complaint. Everything possible was done to alleviate her sufferings and to save her life; of this she appeared fully conscious, and no murmur escaped her. She exhibited great patience and fortitude, and when administered to, her eyes looked the gratitude which she was too weak to express Last evening she alluded to her children who had gone, as though she saw them, and said they wanted her to come to them; but she regretted to have to leave her husband and children here. Her death was as though she had fallen into a peaceful slumber, so quiet was her departure,

An unobtrusive gentle woman, an admirable wife, a kind and indulgent mother, and an exemplary friend, Sister Jennings was beloved and respected by all who knew her. Her death is deeply felt by the family; and she will be missed by a large circle of friends and acquaintances, whose sympathies will be aroused for her husband and children whom she has left behind. Her funeral will take place at her husband's residence at 1 p.m. on Friday.

In this city, May 8, 1871, in childbed, MARIA BERGETTA BORG, wife of L. P. Borg, aged 32 years 6 months and 6 days.

Deceased was born in Ellings, Gylland, Denmark; came to this valley in 1862, was married in the same year and has proved a faithful wife and loving mother. She has left four children.—[COM.