quire, protect and enjoy property. It is sustained by logic, by reason and by com mon law. The same rule clearly applies to the United States, to a State, a Territory, and to less divisions, such as cities, towns and counties owning lands, when they are parties plaintiffs. See the United States *vs.* Gear, 3d Howard 121; Cotton *vs.* The United States, 11th Howard 229. Dugan *vs.* the United States, 3d Wheate 181.

Whenever these civil remedies prove insufficient Congress, like the States, may, by statute, provide for the punishment of offenders by an indictment. See Acts of Congress, approved March 2, 1831, 4 *Statutes at Large*, 4 and 72, 1; *Brightleys' Digest*, 877, Sec. 9. But its statutes must confine its operations to the property of the United States. It is usual and common legislation to provide by statute for the punishment, by indictment, of willful and malicious mischief, so that when the act complained of, though a simple trespass, in the absence of a wanton, wicked and malignant heart is, when accompanied with a wiful, perverse, and mischievous design, indictable.

The Act of Congress referred to above is in these words:

"If any person or persons shall cut, or cause or procure to be cut; or aid, assist or be imployed in cutting or shall *wantonly* destroy, or cause or procure to be *wantonly* destroyed; or aid, assist or be employed in *wantonly* destroying any *live oak* or red cedar *tree*, or *trees* or *other timber* standing or growing, or being on lands of the United States, which, in pursuance of any law passed, shall have been reserved or purchased for the use of the United States for supplying or furnishing therefrom timber for the navy of the United States; or if any person or persons shall remove, or cause or procure to be removed, or aid or assist, or be employed in removing from any such lands which shall have been reserved or purchased as aforesaid, any live oaks or red cedar tree or trees, or other timber, unless duly authorized so to do by order, in writing, of a competent officer, and for the use of the navy of the United States; or if any person or persons shall cut or cause or procure to be cut, or aid or assist or be employed in cutting, any live oak or red cedar tree or trees or other timber from any other lands of the United States, acquired or hereafter to be acquired, with intent to export, dispose of, or use or employ the same in any manner whatever, other than for the use of the navy of the United States, every such person or persons so offending, on conviction thereof before any court of competent jurisdiction shall, for every such offence, pay a fine not less than triple the value of the tree or trees or timber so cut, destroyed or removed, and shall be imprisoned not exceeding twelve months."

This act has been before the courts for a construction, see the United States *vs.* Rady, 5 McLean 358; The United States *vs.* Briggs, 9th Howard 351. In this last case the court held that cutting and using oak and hickory, or any other *timber trees*, from the public lands was indictable, and therefore punishable by fine and imprisonment.

It is here to be observed that the notice and statute above have reference only to timber cutting, &c., and do not include, in express language, anything except trees which are suitable for timber; that is, cutting such trees as are not suitable for anything but firewood is not exressly named in the act; yet the court held all kinds of trees, named or not named in the statute, were within its provisions, and that it extended to all the lands of the United States, at least that is the fair couclusions from the 9th Howard 351.

All this, in countries or places where the United States own timbered lands, seems not only reasonable, but wise, judicious and necessary legislation, as well as sound judicial constructions. From these considerations it would seem to follow that digging coal on lands of the United States, and using it for fuel or other purposes, or digging lead, iron ore, gold, silver, or other precious metal, and using or disposing of it subjects the persons so engaged to, at least a civil suit for damages, and, if there was a statute making it penal, then, to an indictment. So, diverting a stream of water from its natural channel and turning on to other lands of the United States or of individuals, however useful such diversion may be, is still unlawful, and subjects the person to a civil suit for damages; or even building a dam and using the water will produce the same effect. So, too, the making of a road, *public* or *private*, is, in like manner, forbidden. It would seem further to follow that persons purchasing and using timber, fuel or other material of the persons so unlawfully obtaining it, would likewise be liable to the United States for the value of the article. Such, unquestionably, would be the rule if the case stopped there; but it does not stop there. It is equally clear law, that an individual and the United States may, by a licence or permit, though gratuitous, be barred from bringing a civil suit for damages against an individual; or from instituting a criminal proceeding where such a proceeding is authorized, against a person doing or commiting any or all of the acts above mentioned, and that whether such licence or permit be expressly given or implied by law.

Preparatory to the further consideration of this subject I will here state a few facts, which are well known to the people of this Territory, and which ought to be known to the department at Washington, though it is possible that such knowledge does not there exist. The facts are these. There is not one quarter section of land in all Utah, and there never has been, which is fit for cultivation, upon which there is timber enough to make a decent sized corral or a stable, much less a house or a fence to enclose a field. Again, there is not one-fiftieth part of the land now under actual cultivation but what has been brought to that state by diverting the mountain streams from their natural channels and turning the water on to the adjoining lands for irrigation; nor is there a house or other building suitable for white men's use; composed in whole or in part of timber but that the timber has been brought from the mountains adjacent to the valleys, and therefore from lands not actually occupied by the settlers. The table upon which I write, the chair in which I sit, the fire that warms me and that cooked my last meal; the house that shelters my family and what is true with me, embracing the general idea, is true with ninety thousand persons in Utah to-day, was made of wood and timber, brought from the canons, a distance of from ten to twenty-five miles from any land fit for actual cultivation, and at an expense for wood of about ten dollars per cord, and for timber of from forty to one hundred dollars per M., exclusive of cost of roads, an item in some canons, amounting to thousands and in others to tens of thousands of dollars.

Now, as I have fallen into the flight of imagination, I add: when I go out and when I come in I am a trespasser, as I am to-day, on land, the fee of which is in the United States; when I lie down and when I rise up I am the same; if I eat I am exposed to being sued, because I cannot cook without fire, and the fire is made of wood I cannot get without going into lands of the United States. If I do not eat I die, and if I die I cannot be buried without a *tort*: my grave must be dug on Government land, and my coffin made of Government timber. My food is made of grain grown on Government land; if I eat beef or mutton, the cattle and sheep feed on the mountain grass, and therefore a wrong or *tort* is committed. If I clothe myself with the wool and hides I am still wrong; in short, if I am a savage, as savages are not subject to a suit, I am all right; but if I am a civilized man I am a tort feasor, for civilized men will have these things, law or no law. Such is the legitimate result of the doctrine before laid down when carried to the extent to which it will necessarily lead, that is, allowing its application to Utah to be equally sound and logical as it was and yet is in the country for which it was adopted and enacted.

There is a law of nature, and one, too, which man may modify; but he cannot repeal nor entirely control it. On the contrary, he *must*, to a great extent, be controlled by it. This I will now consider and call it the aspect of nature. To produce vegetable life, of which timber constitutes a part, two things must concur—heat and humidity. Vegetable life cannot be produced nor sustained without, at suitable times and fair proportions of, both heat and water. Excessive heat without water, or excessive cold with water, or water without heat, destroys vegetable life, or at least such part of vegetable life as serve chiefly for the food of man. In the country east, the country for which and over which the laws above referred to were first made and enforced, had an admirable combination of both heat and water. The result was, timber of all kinds, in great abundance and of excellent quality. For civilized man to get his food and clothing there, he was *forced* to clear the land and use or destroy the timber. Nearly every acre had to be cleared and every farm had its timber. Man, as he must in all countries, adapted himself to the aspect of the country, and wisely and judiciously made the laws for that place which I have before said were wise, logical and sound. The laws of nature, as seen in the aspect of the country, and the laws of man harmonized, or in other words, man did precisely what he was forced to do by the aspect of nature.

Man came to the Great Basin—Utah. This he found, not like the East—covered with timber, but throughout its entire length and breadth alternated with valleys and mountains. The valleys extending, in some instances, sixty or eighty miles in length, and from five to twenty miles in breadth, on which *there was* no timber or trees of any kind, but scil reasonably good. The mountains of various hights, lengths and breadths interspersed with cañons. Upon the tops of these mountains snow could be seen nearly every month in the year. In the cañons, far distant from the valleys, timber, in small qualities and of an inferior quality, could be obtained. In the valleys was soil and heat, but not water, except what flowed in their natural channels to the Great Salt Lake. Snow in the winter would fall, but rain in the summer did not, and would not descend. There was here wanting one of the indispensable requisites for the sustenance of vegetable life—water, and therefore trees could *not* grow in the *valleys*. It is of no use, Mr. Editor, to complain of the aspect of nature here, though exactly the reverse of that in the East; and man here, as there, was forced to obey it, and is yet so forced, notwithstanding these laws.

In my subsequent remarks, I shall endeavor to show that, in the case of homesteads and preemptions, referred to in the notice and in the circular, in Utah is not only inapplicable, but utterly impossible of due observance and execution. Here is a mandate of nature prohibiting the due observance of this law, and if the law is applicable here, then the mandate of nature and the mandate of the law instead of harmonizing, as in the East, are here in direct conflict. Then the question will follow: Which *must yield?*

This communication has already gone to a goodly length; I shall, therefore close, and reserve for my next the notice of the laws of the United States, showing that Congress never did and never could have intended any such result as I have indicated above.

Yours respectfully,

Z. SNOW.

DIED.

At Wallyford, near Musselburgh, March 21, FRANCIS L., son of Andrew and Eliza King, aged 1 year, 11 months and 15 days.—*Mill Star.*

NOTICE!

TO WHOM IT MAY CONCERN. That cash entry (No. 565), Town Site, Beaver City, Beaver County, Utah, made December 31st, 1870, embracing S ½ of S W ¼, Section 15, N W ¼ and N ½ of S W ¼, Section 22, N ½ of S E ¼ and N ½ of S W ¼, N E ¼ and N W ¼, Section 21. N ½ of S E ¼ and N E ¼, Section 20 S ½ of S E ¼, Section 17, S ½ of S W ¼ and S ½ of S E ¼, Section 16, in Township No. 29, S of Range No. 7 W, containing 1,280 acres, has been made in trust for the inhabitants, and is now ready to be disposed of in Lots to any person or persons entitled thereto.

All persons claiming to be the owner or possessor of any portion of said entry, will take due notice and make the application as provided in the Statutes of Utah.

JOHN ASHWORTH,
Mayor.

Beaver, January 28th, 1871. w2-3m

NOTICE!

TO WHOM IT MAY CONCERN! That whereas I will appear, on Thursday, the 1st day of June next, at 10 o'clock a.m., at the U. S, Land Office in Salt Lake City, U. T., to make cash entry No. 2453, for the Townsite of New Harmony, Kane County, embracing the following described lands, to wit: The S E and the N E quarter of Sec. 21, the S W and the N W quarter and the N W and the S W of Sec. 22, Township 38, South of Range 13 west, containing 120 acres.

Also to make cash entry No. 2467, for the Townsite of Kanara, Kane County, embracing the following described lands, to wit: The S half of the N E quarter and the N half of the S E quarter of Sec. 34, and the S W and the N W quarter of Sec. 35, Township 37, South of Range 12 West, containing 200 acres.

Also to make cash entry No. 2630, for the Townsite of Toquerville, Kane County, embracing the following described lands, to wit: Lot 1, S half of the N W quarter and the E half of the S W quarter and the N W quarter of the S W quarter of Sec. 2, Township 41, South of Range 13 West, containing 240 acres.

To make the proof required by law, and show that I am entitled to have the entries made, under "An Act of Congress, for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and also "An Act amendatory thereto," approved June 8, 1868, for the use and benefit of the inhabitants thereof, at which time and place any person or persons can appear and show cause, if any there be, why such entry should not be made.

JOHN NEBEKER, Probate Judge.

Toquerville, April 29, 1871. w13 4