

DAILY RECORD-UNION

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UP-TOWN BRANCH OFFICES. At Thomas W. McAuliffe & Co.'s Drug Store, southeast corner of Tenth and J streets.

Weather Forecast. Northern California: Fair Saturday; southerly wind inland; fresh westerly winds on the coast.

THE ARBITRATION LAW.

The bill for arbitration and mediation of disputes between railway employes and employers is now a national law. It relates only to interstate carriers, of course. It is said of it that it is a law to protect the rights of labor in railway employment, and at the same time to sustain the rights of railway employes.

The new law recognizes railway labor organizations, and gives them power in case of arbitration to name an arbitrator to represent the employes in the organization or union. It gives them, by their officers, the right to be heard before receivers and courts controlling railways under receivers as to wages and regulations, and it prohibits receivers of railways from reducing wages without order of court after due notice to the employes.

It is also provided that incorporated unions of employes shall provide in their articles of incorporation and laws that a member shall cease to be such for using or instigating force or violence against persons or property during strikes, lockouts or boycotts, and they are prohibited also from using any means to prevent other workers from seeking employment. In so far as resorts to violence, threats and the like weaken the usefulness of labor organizations this provision is beneficial, and will greatly strengthen labor associations. But there is no requirement that all such shall organize as incorporated bodies to secure recognition; at least, from the synopsis of the law at hand, no such requirement is discovered.

When a controversy arises threatening to interfere with traffic or business on the lines, at the request of either side, the Interstate Commerce Commission shall open communication with both sides, and at once seek to bring about adjustments by conciliation and mediation. If these fail, then arbitration may be resorted to.

But the arbitration is not compulsory. Nor in fact can there be any such thing as compulsory arbitration; the terms are contradictory and arbitration compelled is compulsion alone with no element of arbitration in it. Both sides, therefore, must be willing to arbitrate the issue pending. Each side is then to choose one person, and these two the third member of the board. If there is failure for forty-eight hours to select the third member, he is to be appointed by the Commissioner of Labor and the Chairman of the Interstate Commerce Commission.

Pending arbitration, it is unlawful to disturb the status existing just prior to the dispute arising. In this we find protection for the public, which is not a party to the dispute. The award is to be final and conclusive, and under the law binding upon both parties, and practically may be enforced as a court judgment. In this respect it conforms to arbitration as recognized and provided for in all the State statutes, and which has been the law from the beginning of statute-making in all civilized countries.

If the employe is dissatisfied with the award, he shall not on that account quit the service of the employer for three months, without giving thirty days' notice. Employers in like manner are prohibited from making discharges within the same period without giving similar notice in writing. But this can have only moral force, since other cause will always be found to justify evasion of the law. But the moral effect upon organizations of either side will be good, since it will enable them to hold their membership to performance under the law under penalty of being cut off from the benefits of organization.

The Act may be productive of good; assuredly, its moral influence will be great; and in that that hope for its beneficent results. But as a legal or compulsory method of adjusting labor issues, we cannot see that it possesses much virtue. It is said that the law is the result of long study of the whole question by some of the best minds of the country, representing both employes and employers, and the public standing between the two. Let us, therefore, hope that it will be productive of good.

In the month of March, 1893, the value of merchandise carried between Hawaii and California and Hawaii and other Pacific ports was almost two millions of dollars. Of that sum nearly one million six hundred thousand dollars' values went and came in American ships. If now we owned Hawaii as we should, that carrying trade would be wholly on American bottoms. But if we let slip the opportunity to possess the islands it is safe to say that none of it will go on American bottoms. When the island group belongs to England or Japan we will find that those nations understand how to butter their bread.

There are vague dispatches in the current news of the day every now and then concerning the possibility of Germany, through agreement with Spain, or of her own motion, intervening in the Philippines, either to our exclusion or to the seizure of some one of the more desirable islands, simply because "the War King" of Germany wants a foothold there, or because he will shelter his act behind a mortgage given by Spain. Of course, these dispatches are denied as rapidly as they are published, but they continue to come.

If there is anything at all in this alleged news worthy of consideration it is to be found in the aggressiveness of Emperor William as a man. That ruler has an ambition to be known in history as "William of the Strong Arm." The spirit of conquest inspires him, and he seeks any and all opportunities to gratify it. Thus far he has been unable to do so to its full. His occupation of territory on the Chinese coast, his extension of German possessions in Africa, sum up his gains. His initial attempt was upon the Caroline Islands, it will be remembered, which proved to be a ludicrous failure. That he should now scheme for division of the spoil in the Philippines is not improbable.

But we are not disposed to believe that the longer-headed statesmen of Germany will favor any such ideas. They may be overcome by the imperial will, but we doubt it. If any European State dreads an alliance between Great Britain and the United States it should exert itself to prevent any intermeddling in this war. If Germany undertakes any such plan of acquisition, with or without the connivance of Spain, it will strike the hour when Great Britain will assert herself, and that, too, as the ally of the United States.

Any plunging of European fingers into the present broth will in an instant sweep away every objection held in this country against an Anglo-American alliance. Let Europe once for all understand that this fight is on between Spain and America, and in no way whatever concerns any Continental power except Spain, and that the United States will not for an instant tolerate any interference to rob it of the righteous and inevitable results of the war.

As, between aiding British schemes through an alliance, and of offense and defense, and acquiescence in the interference of Continental powers with our conduct of the war, its continuance or its cessation, or as to what we may and what we shall not take of the enemy's possessions, the United States will unhesitatingly choose alliance.

That at least will not be dishonorable; the acquiescence in the other would be shame, humiliation and dishonor. To submit to it for an instant would reduce us to a mental level and make us the footstool for every monarchial heel that chooses to tread upon us. We believe that German ambition will be curbed by German prudence; that no such seizure or interference on her part will be attempted as are now talked of.

As for selling or mortgaging any of her estate to Germany just now, Spain is by the United States declared incompetent; her title is in dispute, and if Germany buys she does so with full notice that the property is heavily incumbered by the American flag.

Senator White, who occupies the unfavorable position of being opposed to the overwhelming sentiment of the State he represents, is doing more against the public interest than any other man in the country, since he is but nominally for the nation when he is in a righteous war, and is for a policy toward Hawaii that is meretricious to that country, and would, if carried out, turn the island group over to some foreign Power from which it can forever menace the United States. For mark this, if Hawaii does not become ours it will be the other fellow's property. That is inevitable. Service for sugar trust interests demands great sacrifices.

One good thing about the new national loan, says a contemporary, is that the bonds will be held at home, and will not constitute a drain upon the country; their payment final, and of interest; will never distress the people, since the money will not be withdrawn from the home channels of business and industrial activity.

Put it down this way and you will be right. There are but two classes of opponents to Hawaiian annexation: the sentimentalists who fear that it will be abandonment of principle that is virtuous chiefly because it is old, and those others who are in the hire of the sugar trusts and combines; and the latter are the more numerous.

A German statesman declares that if the United States proposes to administer upon the estate of Spain in the Orient, Germany for one will insist upon being counted as one of the heirs. And by what right, pray? We are not dispossessing Spain of her robber-acquired possessions to parcel them out again among other nations that did not happen to be first to pounce upon the goods of aboriginal peoples.

Spain proposes to send Weyer at the head of a relief expedition to the Philippines. That is all right. Of all men on earth he is the chap Dewey and his support would like to meet.

SOME NOVEL LEGAL POINTS.

THEY WERE DECIDED BY JUDGE HUGHES YESTERDAY.

Judgment Rendered for Plaintiff in the Case of W. S. Kendall vs. Troi and Others.

Superior Judge Hughes yesterday rendered a very interesting decision in the case of W. S. Kendall against Frank Troi, H. Wittenbrock and others. It was a case of foreclosure of a mortgage, but many side issues of an unusual character were involved. The decision is as follows:

W. S. Kendall, plaintiff, vs. Frank Troi, H. Wittenbrock, John Doe and Richard Roe. This action is brought to foreclose a mortgage made by Frank Troi to the plaintiff on August 29, 1892, to secure the payment of a promissory note dated August 23, 1892, for twelve hundred and fifteen dollars and with interest at 1 per cent. per month and future advances not exceeding three thousand dollars. Under the clause authorizing future advances plaintiff claims to have loaned the defendant, Frank Troi, nine hundred and sixteen dollars and ten cents on July 1, 1893, and with interest thereon at six per cent. per month and ninety-six cents on December 20, 1894, each of which advancements is evidenced by a promissory note made on the date of such advancement and bearing interest at 1 per cent. per month. On October 18, 1893, the mortgagee died before the coming on of the trial of the case, and the executrix of his last will and testament, Eliza Wittenbrock, has been substituted for him as a defendant in this action, and she has filed an answer and cross complaint.

It appears that on or about 6th day of October, 1887, the defendant, Frank Troi, purchased of the estate of W. H. Bailey, deceased, the southeast quarter of section ten, and the southwest quarter of section eleven, both of township seven north, range six east, M. D. B. and M., situated in Sacramento County, for six thousand five hundred dollars. Troi borrowed of Wittenbrock four thousand six hundred and fifty dollars, which was applied on the purchase price of the land, and gave Wittenbrock a mortgage on said land to secure the payment of said loan. On June 28, 1892, the mortgage, not having been paid by Troi, and being about to expire by limitation, Troi gave Wittenbrock a new mortgage on the same land for seven thousand dollars, payable three years after date, with interest at 9 1/2 per cent. per annum, which mortgage was advanced on June 25, 1892, in book 57 of mortgages at page 192 of the records of Sacramento County.

On August 20, 1894, Troi being still unable to pay his indebtedness to Wittenbrock, which at this time amounted to nearly nine thousand dollars, and being also desirous of settling said indebtedness, joined with his wife, Eliza M. Troi, in the execution of a grant deed to Wittenbrock for said land, which said deed was recorded on the 21st day of August, 1894, in book 159 of records at page 474 of the records of Sacramento County. The deed accepted by Wittenbrock caused an abstract of title of said land to be made by J. J. Buckley, a searcher of records at Sacramento City, and therefrom it appeared that said land was incumbered except by the mortgage to Wittenbrock, and he was so advised by counsel to whom the abstract was submitted. At the time of the execution and delivery of said deed on August 20, 1894, to Wittenbrock, he entered into the possession of said land and so remained in possession thereof until the date of the payment to Troi of the sum of five thousand dollars, and that time his said executrix has occupied and possessed the same.

The facts connected with and surrounding the execution of plaintiff's mortgage are as follows: The defendant, Frank Troi, in addition to the cultivation of the land which he owned and had mortgaged to Wittenbrock as above stated, had rented and was engaged in the cultivation of a tract of land known as the "Parker ranch," situated some four or five miles distant from the lands mortgaged to Wittenbrock. To secure the payment of plaintiff's said sum of twelve hundred and fifteen dollars borrowed from him as aforesaid and for the purpose of enabling the defendant, Troi, to sow and harvest a crop on the said "Parker ranch," Troi, in addition to the mortgage on the growing crop on said "Parker ranch," which is the mortgage that plaintiff seeks to foreclose in this action. Said mortgage was written by the plaintiff himself on an ordinary printed form of crop mortgage.

In said printed form of mortgage there are two blank lines just above the attesting clause left for the purpose of inserting any agreement between the parties not included in the printed matter in said form, and which two lines are usually employed for the purpose of limiting the time or place for the delivery of the crop to the mortgagee in the event of the failure of the mortgagor to make the payment therein provided for. In these two blank lines in plaintiff's mortgage the plaintiff has written with a pen, in a very fine hand, and in ink, the following covenant, namely: "And for the purpose of securing the payment of any deficiency I hereby grant unto the second party all the land owned by me of every description wherever situated, lying and being in the city of Monterey, Cal., or State of California, and I hereby authorize the second party to foreclose this mortgage against said lands wherever they may be as aforesaid at any time after September 1, 1893, and the court in which said action may be brought shall, if requested, appoint a receiver to take charge of said land and sell the same in the same manner as lands are sold upon execution, and apply the proceeds to the payment of such deficiency; and a reasonable attorney's fee to be named by the court shall be added to the charges and costs of this mortgage." As was just stated, this was written very closely and in a very fine hand, and in fact so fine and so close that seven lines of pen writing were inserted in a space intended for two lines only.

It will be remembered that on the first page of said printed form of mortgage there is a blank reserved for the description of the property to be mortgaged, and that in plaintiff's mortgage the "Parker ranch" and the crops growing thereon were fully described in this part of the instrument. The plaintiff's said mortgage was recorded twice in the records of Sacramento County: first on December 5, 1892, in book 66 of crop mortgages at page 409, and secondly on December 21, 1894, in book 71 of real estate mortgages at page 389—this last recordation being after the deed from the defendant Troi and his wife to Wittenbrock had been recorded. Under the recordation laws of the State of California the prior record of the deed to Wittenbrock would give it precedence over plaintiff's mortgage, unless Wittenbrock at the time of the execution and delivery to him of the deed by the defendant Troi and wife, had actual knowledge of the existence of said mortgage.

The controversy between the parties narrowed itself at the trial to the question of whether or not Wittenbrock, at the time of the execution and delivery to him of the deed by the defendant Troi and wife, had actual knowledge of the existence of the plaintiff's mortgage. The testimony adduced at the hearing was sharply in conflict as to whether Wittenbrock did have actual knowledge of the existence of said mortgage.

Plaintiff himself testified that some time during the year 1893 Wittenbrock called on him and wanted to know the amount of the indebtedness of the defendant Troi to the plaintiff. The plaintiff informed him that he did not know the exact amount of said indebtedness and could not inform him until, he, plaintiff, had examined his books and that after doing so would furnish Wittenbrock with a statement of Troi's account, and this was done in a short time after Wittenbrock's first call upon the plaintiff. The testimony does not show who delivered this account to Wittenbrock. D. W. Carmichael testified that he was at that time a clerk or bookkeeper for the plaintiff and that he is of the impression that he handed the statement to Wittenbrock; that he also, at that time, handed to Wittenbrock Troi's mortgage to plaintiff. The plaintiff himself was uncertain as to whether he handed the statement and the mortgage to Wittenbrock and also uncertain as to whether Wittenbrock returned the mortgage to him personally or not.

Defendant Frank Troi testified that he knew that the land clause was in plaintiff's mortgage when it was executed, but he also admitted that prior to executing the deed to Wittenbrock he had told Wittenbrock that the title to the land in question was entirely clear. He further admitted saying to E. B. Slight, a son-in-law of Wittenbrock's, that the title was clear when he made the deed to Wittenbrock. Eliza M. Troi, the wife of the defendant Frank Troi, testified that she knew that plaintiff's mortgage covered Troi's land which had been mortgaged to Wittenbrock as well as the crops growing on the Parker ranch; that she had a conversation with Wittenbrock at Broadway and K streets in Sacramento, the exact date not being given, but said conversation occurring prior to the execution of the deed to Wittenbrock, and that he said in that conversation to her that the plaintiff had a second mortgage on the land; that the same had not been recorded; that Wittenbrock also told her in that conversation that he had been to plaintiff's office and got the mortgage and read it.

R. Platner testified that he was Wittenbrock's attorney when the deed from Troi and wife was accepted in payment of Troi's mortgage to Wittenbrock; that witness caused the abstract of title to be made of said lands covered by the mortgage to Wittenbrock, and that when the deed was executed, both Troi and wife were asked by the witness if the title to the land in question was incumbered in any way by any mortgage or lien, and that he told them that said land was entirely clear; that some months after the execution of the deed to Wittenbrock by the Trois, witness called upon Mrs. Troi at her request to attend to some legal business of her husband's, and at that time he told her that the title to the land in question was the subject of conversation and Mrs. Troi told Platner that she did not know that Kendall had a mortgage on the land and never heard anything about it until about the time of this conversation with Platner. Nor did Mrs. Troi at this time tell Platner anything concerning the conversation which on the witness stand she claimed to have had with Wittenbrock at Broadway and K streets in Sacramento. Platner further testified that as soon as he learned of plaintiff's claim of ownership in the land in question he immediately sought Mr. Wittenbrock and told him about the matter and that Wittenbrock seemed very much surprised.

Eliza Wittenbrock, a daughter of said Henry Wittenbrock, testified that her father had a German and had but limited education in English; that he could not write English, and could not read it when written with a pen; that she and other members of the family read his letters when received, and wrote replies thereto, at her father's dictation; that it was impossible for her father to read the land clause in plaintiff's mortgage. S. B. Slight, a son-in-law of Wittenbrock, testified in substance to the same state of facts with reference to Wittenbrock's knowledge of English and his ability to read and write it, and was testified to by Miss Wittenbrock. He was also positive that it would be impossible for Wittenbrock to read the land clause in plaintiff's mortgage. He further said that since this action had been commenced the defendant, Frank Troi, had approached him and said that if there was any clause in plaintiff's mortgage covering the real property, that he (Trois) knew nothing about it; that there was no such clause in the mortgage when he executed it, and that plaintiff had offered him inducements to be a witness in the case.

Peter Beckendorf testified that he had, at the request of Wittenbrock, and (Continued on Fourth Page.)

"DAY" MALARIA "CURE" Cured a Severe Case.

Sacramento, Cal., May 13, 1894. FRANCIS S. OIT, Manager, HOTEL DEL MONTE, Monterey, Cal.

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DR. TOM SHE BIN. For more than a year I was afflicted with sciatica rheumatism. My suffering was simply awful. At night or day I could neither sleep nor rest, and was often tempted to end my sufferings by violence, when Dr. Tom She Bin was recommended to me. I was taken to his office. He at once told me he could cure me. I began to take his tea; in a few days I was relieved, my condition improved rapidly, and at the end of two months I could attend to my business, and to-day I am entirely cured.

DR. TOM SHE BIN. For several years I was troubled with jaundice. I tried many remedies; none seemed to do me any good. I became so yellow and sallow that no doubt to myself and no doubt to my friends. I was persuaded to take Dr. Tom She Bin's herb tea; almost immediately I felt better, and after three months' treatment I am as well as usual. I am very grateful to the doctor. W. L. KENNEDY, 729 Harrison Street, San Francisco, Cal., May 25, 1888. I want to tell the people how grateful I am to Dr. Tom She Bin. I was for over three years suffering from jaundice, stomach trouble. I was in misery all the time. I tried everything I heard of, but got no better. I was told to try Dr. Tom She Bin's medicines. I did not like a Chinaman, but I suffered so much that I went to him. He gave me some tea and herb tea. I got better very soon, and after four months' treatment I am well. MRS. E. M. TOOLEY, No. 5 Williams Street, between Geary and O'Farrell, San Francisco, Cal., April 10, 1888. Dr. Tom She Bin: I wish to thank you for the benefit I have received from your herb remedies. I was for over four months from acute trouble of the bowels, suffering from constipation. For weeks I was entirely cured. I have recommended you to all my friends and shall continue to do so whenever opportunity presents. I wish you every success. MRS. T. C. BAKER, 449 Montgomery Street, Portland, Or.

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