WEEKLY CITIZEN.

SATURDAY JULY 27, 1889,

OPINION

Upon the Constitutionality of the Territorial Auditorship.

By ATTORNEY-GENERAL CHURCHILL.

PHENIX, ARIZONA, June 25, 1889.

HON. LEWIS WOLFLEY, Governor of Arizona.

Sir:—In response to the request of your Excellency that my opinion in writing be given to you upon the following propositions, viz:

First—Whether the acts passed by the 15th Legislative Assembly on the 10th day of April, A. D., 1889, are valid laws?

Second—Whether Hon. Thos. Hughes is entitled to exercise the duties of the office of Territorial Auditor of the Territory of Arizona?

I have the honor to reply as follows, to wit: The Revised Statutes of the United States (Section 1851) provide that "The Legislative power of this Territory extends to all rightful subjects of legislation, and they do not fall within any of the exceptions made by the terms of the above act of Congress, and they are not inconsistent with any provision of the constitution or laws of the United States; hence they are in my judgment valid laws. It has, however, been contended that the sessions of the Legislative Assembly having been limited to sixty days' duration and that the 15th Legislative Assembly having first convened and commenced its labors on the 21st day of January, 1889, that the sixty days during which it was authorized to sit as a legislative body commenced to run then, and continued to run without interruption until the 21st day of March, 1889, when it expired by limitation of law, whether the respective houses were during the intervening period in actual session or engaged in the performance of legislative duties or not; and that after the 21st day of March, 1889, all of its proceedings were a nullity, or in other words, that when the consecutive sixty days after the day of commencement expired, it became ipso facto functus officio, and no longer entitled to be considered as a legislative body, but only an unauthorized assembly of private individuals. I cannot, however, entertain this view. It is not in accordance with the spirit of the Act of Congress organizing our system of territorial government. It would seem that Congress, in organizing this territory, reserved to itself the exclusive right to annul the laws of our legislative assembly. Section 1850 R. S. U. S. provides that "All laws passed by the legislative assembly and governor of the territory * * * shall be submitted to Congress, and if disapproved, shall be null and of no effect," and, of course, the natural intendment is, that if not disapproved, they shall have full force and effect. In the case of the Miner's Bank vs Iowa (12 Howard 1) the Supreme Court of the United States made use of the following language, viz:

"Congress, in creating the territorial governments, and in conferring upon them powers of general legislation, did not, from, obvious principles of policy and necessity, ordain a suspension of all acts proceeding from those powers, until expressly sanctioned by themselves, whilst for considerations equally strong they reserved the power of disapproving or annuling such acts of territorial legislation as might be deemed detrimental". The whole scheme of government of the Territories is based upon the theory that the people are sovereign and should be allowed to govern themselves and they are placed upon probation, and permitted to try to govern themselves by the organic act, subject at all times to revision by Congress. In the case of Territory vs Scott, 20 N. W. Rep. pp. 405 et seq. the Supreme Court of Montana says: "It was never the intention of the framers of our federal union that any portion of the public domain should forever continue to be but "political subdivisions of the outlying dominion of the United States," bearing a relation to the general government "much the same as that which counties bear to the respective states". Nor do we think "that the above language, quoted from the opinion of the Supreme Court of the United States in the case of Nat. Bank v. Yankton, before cited, is to be extended beyond its original purpose.

The principal questions under consideration in that case were as to the power of Congress to legislate specifically for the territories, and the effect to be given to such legislation, and to those questions the language quoted was apt and pertinent. But it is unnecessary to presume that language was intended by the court as an accurate judicial definition of the political status of the territories applicable to all cases. Such a proposition would not command the assent of any diligent student of constitutional law, and we think no such construction can be placed upon that opinion.

The controlling basilar idea of our republic is that of our organic union of republican states; a noble building "fitly joined together, and compacted with that which every joint supplieth." The ultimate purpose is that every portion of its territory shall, as soon as practicable, be organized into states which shall take their equal place and part in the union. The territorial condition is but a necessary incident of immaturity.

Every essential element of statehood is there, and the policy of the government has always been to employ this period as one of preparation by clothing the territories with the paraphenalia and investing them with many of the duties and privileges of statehood.

Let us see what has been done in this respect. The ordinance of 1787 for the government of the Northwestern territory has been already alluded to, and although that was enacted prior to the adoption of the constitution and is not now in force, (Strader vs. Graham, 10 How. 32,) the general policy of Congress in reference to the government of the Territories has remained as therein expressed. We do not wish to be understood as affirming any right in the inhabitants of any portion of the public domain to demand admission into the union as a state. The hand that created can destroy, and the boundaries of any Territory may be entirely altered by Congress at its pleasure. We are merely stating what we understand to have been the general policy of the government.

The acts under which the several territories have been from time to time organized, are all drawn after the same general pattern, and are in all essential particulars similar. * * * * * *

And after proceeding to state the provisions of the organic act of Dakota which are the same as those of Arizona, the court proceeds further, as follows: "Here, it will be observed, is no code of laws, civil or penal. This organic act is, in all its essential generic features, similar to the constitutions of the several states, and there can be no doubt that it was designed to serve a similar purpose, (Ferris vs. Higley, 20 Wall. 375, 380;) the power to amend, alter or repeal, however, remaining in Congress, which may exercise such power in a summary way, either directly or indirectly, by adverse legislation."

In the case of Hornbuckle vs. Toombs, 18 Wall, 652, Mr. Justice Bradley, in rendering the decision of the Supreme court of the United States, made use of the following language: "Whenever Congress has proceeded to organize a government for any of the Territories it has committed to Territorial Assembly full power, subject to a few specified or implied conditions, of supplying all details of legislation necessary to put the system into operation. As a general thing, subject to the general scheme of local government chalked out by the organic act, and such special provisions as are contained therein, the local legislature has been entrusted with the enactment of the entire system of municipal law, subject also, however, to the right of Congress to revise, alter and revoke at its discretion. The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any state legislature."

Having permitted the people to elect a legislature and to proceed to put in operation a complete system of self-government within and under the provisions of the act of Congress and the constitution of the United States, the power was necessarily conferred upon these people and their legislative assemblies and the territorial, county and municipal officers to practically enforce and apply those acts of Congress whereby they were to be governed according to their own judgment and understanding of their signification, subject at all times to revision or revocation by Congress, but by no other power.

The first act passed by Congress providing for the organization of the government of this Territory was entitled "An act to provide a temporary government for the Territory of Arizona, and for other purposes," approved February 24th, 1863, and was composed of only three sections; and the second section contained the following provision: "And the powers, duties, * * * of the Governor, the Legislative Assembly, * * shall be such as are conferred upon the same officers by the act organizing the Territorial government of New Mexico, which subordinate officers shall be appointed in the same manner and not exceed in number those created by said acts and acts amendatory thereto, together with all legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this act, are hereby extended to and continued in force in the said Territory of Arizona, until repealed or amended by future legislation * * * ." (The act of Congress entitled "An act to provide for additional clerks and extend the sessions of the Legislative assembly of the Territory of New Mexico, approved March 3d, 1883, was not applicable to Arizona. It was not an amendment to the act organizing the Territorial government of New Mexico, approved September 9th 1850; and it is inconsistent with the provisions of that act, and hence it is excluded by the express terms of the organic act of Arizona.)

And section 5 of the act organizing the Territory of New Mexico provided that no one session of the Legislative Assembly should exceed the term of forty days, and it provided further that the first session should commence at such times as the Governor should appoint. Under this act Governor Goodwin by proclamation appointed the 26th day of September, 1864 as the time of the commencement of the first session of the Legislative assembly of this Territory; and the consecutive forty days thereafter including said first day expired on the fourth day of November of that year. The first session of the Legislative Assembly of this Territory under those provisions of the statute and the proclamation of the Governor fixing the time of commencing began on the 26th day of September, and continued in session from time to time until and including the 10th day of November 1864, which was six days after the expiration of the forty continuous days after the first session. As shown by the journals of that session a complete code of laws known as the "Howell code" was passed and approved by the Governor on the 8th, 9th and 10th of November, and after the expiration of said consecutive forty days. By the provisions of this code the legislature provided for the formation and rights of counties, created Territorial, county and precinct officers, created a seal for the Territory, a Territorial Supreme Court, Territorial District Courts, Probate Courts and Justice's Courts, conferred additional powers upon the Governor and Secretary of the Territory, defined, and authorized the prosecution of persons charged with the commission of crime, provided for the conveyance of property, and the recording of such conveyances, located the seat of the Territorial government, authorized the collection of taxes, the erection of public buildings, and provided generally a complete system of municipal law. Under this code the Justices of the Supreme Court of the Territory held the first term of the Supreme court, assumed jurisdiction and heard and determined cases under and by authority of that code, and each of those Justices severally assumed to hold a Territorial District Court, and heard and determined cases brought before them in those courts under the provisions of those statutes; the county governments created by that code were organized, taxes were levied and collected, jails and court houses were built and the government of the territory generally was administered under and by virtue of its provisions; elections were held and the people of the Territory cast their votes under and according to the provisions of that code, and it was actually received, acknowledged and in all respects treated as a part of the law of the land. Subsequent legislative assemblies met at the same time and place fixed by that legislature and held their several sessions. In that legislation they referred to the "Howell code" as a statute of the Territory. The several Governors and Secretaries of the Territory performed their duties under its provisions.

The 11th Legislative Assembly, held in 1881, after the amendment of the act of Congress changing the duration of the session from forty to sixty days, began its session on the 3rd of January and ended it on the 12th day of March of that year. During the session the question was raised and debated whether the sixty days were consecutive, or working days of actual sitting, and upon a vote it was held by a large majority that they would not adjourn until the 12th of March, nine days after the expiration of the consecutive sixty days, but only including sixty days of actual sitting. At this session many important laws and especially the act fixing the time for the meeting of subsequent Legislative Assemblies were passed after the consecutive sixty days had expired, and each Legislative Assembly since then down to and including the 14th Legislative Assembly has followed that act, and commenced their sessions on the second instead of the first Monday in January and continued for the allotted time subsequent to that day so fixed by the act of 1881 in session. If that act was void, then the time when they should have begun remained the first instead of the second Monday in January, and the consecutive sixty days thereafter expired seven days earlier than the time when they actually ended their session, and most of the statutes of the Territory now being enforced were passed after that time. Hence if it be now held that the duration of the Legislative sessions in this Territory is limited to sixty consecutive and continuous days from the time fixed by law for their commencement, and that any law passed after the expiration of those consecutive days is void, the effect would be to annul nearly all the laws of the Territory, and destroy our entire system of government to the great prejudice of the public weal and the destruction of private rights. Such a construction ought not at this time to obtain in this Territory. It is quite apparent that the people generally as well as the officers of this Territory have not understood that the sessions of the Legislative assembly were limited to consecutive days and that they have acted and built up a system of laws upon that theory. Whatever may be the theoretical construction of the abstract language of the Act of Congress, nevertheless the courts and officers here are and of necessity ought to be bound by the practical construction which has actually been placed thereon in this Territory as above stated, and in support of this view attention is called to the following authorities, viz:

State vs. Kuhl, 17 Atlantic Rep. pp. 102 et seq.
Story on the Constitution, Sec. 403.
Cooly's Constitutional Lim. Sec. 81.
Briscove vs. Bank, 11 Pet. 318.
Nurs. vs. Reading, 21 Pa. St. Rep. 188.
State vs. Kelsey, 44 N. J. Law 1.
Stuart vs. Laird, 1 Cranch 299.
Cohens vs. Virginia, 6 Wheat, 264-418.
Ogden vs. Saunders, 12 Wheat, 290.
State vs. Parkinson, 5 Nevada, 15.
Clinton vs. Engelbrech, 13 Wall. 434.

In the latter case, Chief Justice Chase, in delivering the opinion of the Court made use of the following language, viz:

"This uniformity of construction by so many Territorial Legislatures of the organic acts in relation to their legislative authority, especially when in connection with the fact that none of these jury laws have been disapproved by Congress, though any of them would be annulled by such disapproval, confirms the opinion, warranted by the plain language of the organic act itself, that the whole subject-matter of jurors in the Territories is committed to Territorial regulation."

Mr. Story, in his work on the Constitution says: "The most unexceptionable source of collateral interpretation is from practical exposition of the government itself in its various departments upon particular questions discussed and settled upon their own single merits."

Mr. Cooley expresses a like view in the following language: "When there has been a practical construction which has been acquiesced in for a considerable period, considerations in favor of adhering to this construction sometimes present themselves to the courts with a plausibility and force which it is not easy to resist."

Cooley, Const. Lim. 81.

This principal was acted upon by the Supreme Court of the United States in Stuart vs. Laird, 1 Cranch, 299, where that court sustained the authority of its members to sit as circuit judges on the ground of a practical construction commencing with the organization of the government."

The case of Smith vs. Foster was an action brought for the usurpation of the office of Territorial Treasurer. The plaintiff sought to recover on the ground that he had been appointed by the Governor by and with the advice and consent of the Legislative Council, and also upon the ground that he had been subsequently appointed by the Governor alone. On the trial it appeared that the Governor had, on the 8th of April, 1889, nominated plaintiff to the Territorial Council for the office in question and that the Council had confirmed the nomination; that thereafter the Governor had issued his commission to plaintiff as Territorial Treasurer; that he had qualified and demanded the office but that Mr. Foster refused to surrender the office to him. The judgment of the court was to the effect that plaintiff was entitled to the office and that he be put in possession thereof, and that defendant cease to exercise the duties of the office or assert any right to the same. The logical force of this judgment is to sustain my views upon the question under consideration.

But the learned judge before whom the case was tried, in rendering his decision, filed a written opinion giving his views upon the questions in controversy in the course of which he made use of the following language: "The law is that the session should be limited to sixty days duration. If any days were to be excepted it would have been so declared, for the organic act, speaking of the time a bill is to be with the Governor, mentions 'Sunday excepted.' It must mean sixty consecutive days; otherwise the legislature might sit month after month for a few days at a time till the end of the two years, much to the inconvenience, security and welfare of the people. With this view it follows that the council's action in conferring the plaintiff as Territorial Treasurer was nugatory, and any laws passed by the Legislature after the expiration of sixty days are null, unless Congress act upon them and make them valid." And it has been asserted that this is a decision of the question by the District Court, and entitled to be accepted as an authority upon questions involving the validity of the session of the legislature.

But I consider these expressions as merely obiter dictum and not as a solemn adjudication of the question referred to because the determination of this question was entirely unnecessary to the determination of the case before the Court, and hence these expressions, while they are entitled to great respect as emanating from the Hon. Judge of the highest court of original general jurisdiction in the Territory, they are still only the voluntary expression of an opinion, and are only entitled to that weight in the present consideration of the subject which their logic entitle them to upon close analysis. In other words, I regard the question as still open to discussion and determination in the same manner as though said expressions of opinion had not been made by the District Judge.

I deem it proper in this connection to consider and discuss the propositions therein enunciated in the same manner as though said expressions had not been made, except in so far as the above language is sustained by reason; and for the purpose of testing their weight by that standard let us carefully examine and compare them with other expressions in the same opinion bearing upon the same subject.

The learned Judge of the District Court in that opinion makes use of the following language: "If any days were to be excepted it would have been so declared." Why may it not as well be said that if the days mentioned were to be consecutive it would have been so declared? There seems as much reason to infer the one sequence as the other. The language of the act leaves it entirely open for the legislature to decide for itself: Again: The learned judge in that opinion makes use of the following language: "The Supreme Court of Arizona in Atlantic and Pacific railroad vs. Lesseur, says: "Sec. 1850 Revised Statutes of the United States enacts that all laws passed by the legislative assembly shall be submitted to Congress, and if disapproved shall be void and of no effect." And may we not add, "Otherwise shall have full force and effect. These quotations from the statutes are made to meet the contention that a previous legislature had fixed the time for meeting of the Legislature on the first Monday of January, and that the statute that fixes it on the second Monday, and other laws of the Revised Code were passed sixty days after the first Monday, and it is conceded that these laws would be made inoperative if the legislature is to be confined to sixty days session. The revised code has been submitted to Congress, and one session of Congress has passed since such submission, and there being no adverse action the revised code as an entirety is the law of the land.

Counsel for plaintiff do not, however, contend that the legislative assembly can sit longer than sixty days, but insist that the session must consist of sixty working days. I think not. The pay roll introduced shows that members received on the 21st day of March their pay for sixty days."

This argument was evidently made use of to show that the laws passed by the legislatures which have sat prior to the 15th were valid; and I believe the argument is good, but if it be good, it defeats the claim that the laws passed by the 15th are void. These two propositions cannot stand together—if one is good the other is bad. If the acts passed by the 14th Legislative Assembly after the expiration of the consecutive sixty days are valid, then those passed by the 15th after such expiration are equally so, for Congress has not in either case expressly approved any of those acts. If there was no Legislature in session on March 10th, 1887, when a large part of the Code was passed and if the men who acted as such were an unauthorized body, then there can be no presumption that their acts were presented to or approved by Congress. The act of Congress provides only that "All laws passed by the Legislative Assembly and Governor * * * * shall be submitted to Congress, and if disapproved shall be null and void," and this provision does not apply to any proceeding nor to any body of men who do not legally constitute a "Legislative Assembly." The only theory upon which such acts can be sustained is that they were passed by a legal Legislative Assembly, and the only theory upon which the 14th Legislative Assembly can be held to be legal, is by construing the act of Congress limiting the days of its duration as applicable to working and not consecutive days. The allusion to the pay roll and the fact that that instrument shows that on the 21st of March the members were paid for sixty days can have no bearing upon the case unless it be upon the question of fact as to the length of time they had remained in session, and upon that question the journals of the two houses are certainly the only competent evidence. These journals are the only official record of the proceedings of the Legislature; they are the only record of the proceedings of the council and of the house as legislative bodies; and their verity sanctioned by a daily reading in the several houses and approved by them severally and certified and authenticated by their officers as legislative bodies render them conclusive evidence upon the subject. These journals show that each house had been in actual session only forty-eight days when they adjourned sine die on the 10th of April, 1889, and these journals are conclusive on the question of fact. This evidence cannot be overcome nor contradicted by any act of any individual member of either house, nor by the collective action of all the members of both houses when not in session as legislative bodies. The fact that the U. S. Government paid these individual members for days when neither house was in session does not prove that the houses were in session nor that the intervening days when they were not in session should be counted as part of the sixty days to which the duration of the session was limited.

The members of the Legislature are elected for two years and the sessions are required to be biennial. Rev. Stats. Sec. 1846. If each session is limited to sixty consecutive days, why should the members be chosen for two years instead of two months? It is said in the foregoing opinion of the learned Judge of the District Court that "It must mean sixty consecutive days, otherwise the Legislature might sit month after month for a few days at a time till the end of two years, much to the inconvenience, security and welfare of the people." I cannot concur in this view because:

First: The fact that that power may be abused is no argument that the power does not exist.

Second. There is no reason to believe the power would be thus abused. Members of the Legislatures are elected by the people, they are responsible to the people for their official conduct and it is contrary to the whole theory of a Republican form of government to say that the people or their representatives cannot be trusted with power to remain in session so long as in their judgment the public good demands it. They will be paid for sixty days and no more; they may sit and actually do legislative duty for sixty actual working days and no more. Thus they are limited and no further.

The only question before the court in the case of Harpending against Haight (39 Cal. 189) cited by the learned District Judge was whether a bill which had been presented to the Governor could be returned to the Senate of California by the Governor with his disapproval when that body stood adjourned over until a future day certain and before the final adjournment, and that court held that under such circumstances it would be a compliance with law if the bill should be delivered to the President or some other officer, or if no officer could be found then to some member of the Senate and placed beyond the control of the Governor. The very language above quoted from the opinion of the court shows that the legislature was not in "session" although it had an organized existence when it so stood at "recess" or adjourned over from the 31st of March until the next day, and that is a direct expression in support of my views upon the question involved in the interrogatories submitted to me. The act of Congress declares that the duration of the sessions of the Territorial Legislature shall be limited to sixty days—and it does not specify when the sessions shall commence nor when they shall terminate leaving those dates to be fixed by the legislature, but limits the number of days during which they may be in session. Now if they are not in session when they stand at recess or adjourn over to meet at a specified time then certainly those days are not included in the limitation, for the limitation is confined to the session and does not extend to days when they are not in session. While it is admitted that Congress has the power to annul a valid law or declare invalid a valid Legislative Assembly or to make valid or invalid a statute or an illegal assembly acting as a Territorial Legislature and make valid the acts of such illegal assembly yet it cannot do any of these things by silence. If the assembly has no lawful existence its acts must be embodied in an act of Congress or they remain void. The several Territorial Legislatures having for a quarter of a century so construed the organic act as to entitle them to sit for sixty working days without including the time of intervening adjournments if there is any presumption arising from the fact and the silence of Congress, it is that that construction has been adopted and approved by Congress—nothing more.

The organic act of New Mexico, the provisions of which were made applicable to this Territory as already shown, required that the Governor should approve all laws passed by the Legislative Assembly before they should take effect, thus making the veto power absolute; but in the year 1881 Congress passed a special act regarding the veto power in this Territory, (See Supplement U. S. Rev. Stats. 1874 pp. 230) In this special act there appears the following clause: "And if the Governor shall not return any bill presented to him for approval after its passage by both houses of the Legislative Assembly within ten days (Sunday excepted) after such presentation, the same shall become a law, etc. * * * * and it has been suggested that the express exclusion of Sundays from the computation of time in this clause and the omission of all express words from the provision regarding the length of the session in the original organic act shows an intent on the part of Congress to include Sundays in the computation of the time of the duration of the session according to the maxim "expressio unius est exclusio alterius."

But it must be apparent from the statement of the case that this maxim has no application because the statutes in question were passed at entirely different times and relate to different subjects, and there are grave reasons why the greatest particularity should be exercised as to time, which is of the essence of the public business in the one case and not in the other. In the case of the special act lapse of time alone without any act on the part of any one may change a bill without vitality into a valid statute of the Territory, while in the other case no such result follows the lapse of time. But if this maxim is applicable it would only follow that Sundays intervening between the commencement and termination of the session are to be counted, and it does not at all follow that days covered by adjournment are to be included; while in the other case under consideration the days of actual session of the Fifteenth Legislative Assembly including all intervening Sundays were less than those allowed by law—sixty.

Following in the course and according to the precedents of former Legislative Assemblies and the practical construction given to said provision of the organic act of this Territory by all the departments of its government sanctioned by the people of the 15th Legislative Assembly commenced its session at Prescott, which was then the capital of the Territory, on the 21st of January, 1889, and within a few days it passed an act removing the capital from Prescott to Phenix, which act went into immediate effect, and both houses adjourned over a considerable period to meet in Phenix, the new capital, on the 7th of February, and on that day they re-assembled pursuant to adjournment and continued their labors, adjourning over from time to time until the 10th of April, when they adjourned sine die, but the total number of days during which they were actually in session including all intervening Sundays were less than sixty. The language of the statute that the duration of the session shall be limited to sixty days itself excludes the idea that any days when the Legislature was not in session should be included in the computation of the sixty days. No one would for a moment contend that the Legislature was in session when it stood at recess or while it was adjourned over a given period of time, as, for instance, when the members and and their officers were scattered all over the Territory or in California or on their way from Prescott to Phenix after the passage of the act removing the capital from Prescott to Phenix.

To now hold that it had lapsed by the expiration of time would involve injurious consequences to this Territory which it is difficult to forecaste; and the very necessity of the case if no other reason appeared for upholding its acts would furnish sufficient ground therefor. I am clearly of the opinion that on the 10th day of April A. D., 1889, the 15th Legislative Assembly was still in session and that its acts and proceedings are entitled to all the respect and consideration of any regularly constituted Legislative Assembly of this Territory. It appears by the records in your office and in the office of the Secretary of the Territory and the journals of the 15th Legislative Assembly that the Hon. Thos. Hughes was duly appointed by your Excellency to the office of Territorial Auditor by and with the advice and consent of the Territorial Council on the 8th day of April, 1889, and that thereafter and on the 11th day of April, 1889 the said Hughes duly qualified as such Territorial Auditor.

I am of the opinion that he thereupon became the legally constituted Territorial Auditor of this Territory, and entitled to exercise the duties of said office and that he still is Territorial Auditor of this Territory, and entitled to exercise the duties of said office.

Respectfully submitted,

CLARK CHURCHILL, Attorney-General.

Quijotoa.

The following is the official report of the Quijotoa mines under date of July 12. Weldon—No change of importance in the stope 60 feet south of shaft No. 3 since my last report. The ore is still of a very good grade, which we are sacking as it is extracted. Peerless—During the week fair progress has been made in the winze in east parallel drift on the 200-foot level. It is down 30 feet with bottom still in fine grade ore. Crocker—There is no change in upraise No 1 from the 300 hundred foot level. Good progress has been made and the roof is still in ore of good milling grade. The vein on the winze on the 370-foot level still shows strong in the bottom and assays well. Have sunk ten feet during the week, making 18 feet in all.

Hand Crushed.

Mr. Jack McWilliams, a brakeman belonging to the crew of Dan Mahoney was brought to Tucson Saturday with a badly crushed hand which he received while making a coupling at Gila Bend. Mr. McWilliams suffered intensely en route to this place after he was hurt. He is now at the Sister's Hospital in this city and is reported to be doing as well as could be expected under the circumstances.

A CODFISHING TRIP.

Description True to Life, by One Who Has Been There Himself.

Two hours ago we were in New York. Now, on board the iron fishing steamer Angler we are rushing through the blue ocean's waves to the codfish grounds called "The Farms," lying fifteen miles off Long Branch. Only the old time fishermen, not afraid of a little cold weather, are with us, and rigged mostly in oiled skin suits and sou'westers they look picturesque but not handsome.

We pass some wrecks which add to the adventure of the trip and watch with interest the shad fishermen in rowboats, scattered along our way, hauling their nets. The sight of the jumping silvery fish they take out arouses our fishing ardor till the oldest veterans aboard get into an excitement that is pleasant to see.

The morning is beautiful. The sky is intensely blue and the sunshine sparkles merrily on the tumbling billows. A gentle breeze, a trifle cool, from the northwest makes the air as clear as a bell, and the distant coast, the strange looking vessels from foreign ports, the transatlantic steamers, fishing smacks, etc., are a never ending panorama.

At last we have reached the fishing grounds. Every fisherman, glowing with expectations, is in his place, pole in hand, eagerly waiting for the anchor to drop. Down it goes, leaving a string of pearly bubbles behind it. Then 200 whole skimmer clams on as as many hooks fly through the air, hit the water with a splash and swiftly sink to the bottom.

Codfishing is rather slow work and there generally is a long time between bites, but in a few moments we hear the welcome shout: "Get the gaff!" One of the veterans by us on the hurricane deck is struggling to reel in the first fish. All eyes are on him. "Keep him in the water," is the unnecessary advice shouted when the twenty pound codfish comes to the surface. On the lower deck is a man ready with the gaff. "There; now's your chance!" Jab! goes the big hook into the monstrous fish and with a hurrah it is safely landed. The lucky and envied old salt drops his pole and rushes below. When he reappears dragging his three foot long prize by the gills, with his grizzled face flushed with victory and expanding with the proudest smile, he makes a picture that an amateur photographer ought to secure.

"Get the gaff!" now sounds all over the boat. Codfish, hake, pollock, haddock, lobsters weighing twenty-three pounds, skates as big as an overcoat, and great ugly, yellow conger eels, with frightful mouths wide open and twisting into knots, are coming up all around and pounding the deck with their heavy flopping. "Get the gaff!" yells the man on our side, who seems to be pulling in a whale. "Get a club," roar the others as he, with an expression of disgust, fetches up a horrible conger eel, whose teeth will almost bite a knife blade in two.

Capt. Foster is everywhere. Here he comes, dragging a fifty-four pound codfish with one hand and a pollock as big as a boy with the other for the passengers to see and go crazy over. And for four happy hours this grand and glorious sport goes on, till the whistle blows to stop, the anchor is raised and we homeward sail, with more fish than we'll know how to carry away when we reach the dock. Ah! how good those fish taste when we eat them. As different from what you buy as day from night. And how strong and well you feel in body and mind after the trip. And it needn't cost us a cent, for if we're mean enough to sell the fish we can't use, we can live on the profits for a week, more or less.—H. C. Dodge in Detroit Free Press.

Where the Ordinary Man Fails.

How few men there are who can successfully lay and light a fire. There are many who are able to lay and light it, but the results are usually painful to the patient housewife. She may send her husband to the kitchen in the morning to start the fire, feeling confident that she can steal a half hour more of that comfortable doze which comes only with the dawn, but it is an even bet that the smell of burning wood will reach her nostrils sooner or later, and she will be obliged wearily to don her garments and grope her way down stairs to the rescue of her well meaning but unsuccessful other half, who, with his lungs full of the odor of burnt wood and the smoky tears running down his cheeks, is usually found engaged in endeavoring to put life into three sparks with his breath. The only men who are successful in starting fires are the professional fire builders employed in the hotels, and when the ordinary man becomes a hotel guest and reposes in a warm couch on a cold morning and sees how easily the hotel fireman does the work he realizes what a veritable chump he is himself. —Chicago Herald.

A WOMAN'S WAY.

A Startling Business Proposition.

When Mrs. Fowler, of 327 Ellis street, stopped in at a leading city druggist's to ask what effect "The California Remedy," Joy's Vegetable Sarsaparilla, would have in cases of dyspepsia and sick headaches, she was assured it would relieve both. She was so incredulous that the druggist gave her a bottle, not to be paid for unless it effected a cure. The following is the convincing conclusion and tells its own story.

San Francisco, February 8, 1888.

DEAR SIR: Notwithstanding my misgivings, Joy's Vegetable Sarsaparilla did all that you promised. I had tried so many prescriptions that I had come to believe nothing would relieve my dyspepsia and sick headaches, but I have not had a return of either since. I believe I am permanently cured. You have my permission to make this public, for a remedy that will cure dyspepsia and prevent sick headaches should be generally known. Respectfully,

Mrs. M. Fowler; 327 Ellis street

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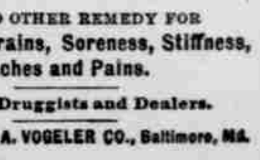

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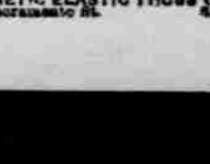

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Commissioners.

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AT THE ACADEMY OF MUSIC, NEW ORLEANS TUESDAY, Aug. 13, 1889

Capital Prize, $300,000

100,000 Tickets at Twenty Dollars each. Halves, $10; Quarters, $5 Tenths, $2; Twentieths, $1.

LIST OF PRIZES.

1 PRIZE OF	$300,000	$300,000
1 PRIZE OF	100,000	100,000
1 PRIZE OF	50,000	50,000
1 PRIZE OF	25,000	25,000
2 PRIZES OF	10,000	20,000
5 PRIZES OF	5,000	25,000
25 PRIZES OF	1,000	25,000
100 PRIZES OF	500	50,000
200 PRIZES OF	300	60,000
500 PRIZES OF	200	100,000
APPROXIMATION PRIZES.		
100 Prizes of	$500, are	50,000
100 Prizes of	300, are	30,000
100 Prizes of	200, are	20,000
TERMINAL PRIZES		
999 do.	100 are	99,900
999 do.	100 are	99,900
3,134 Prizes amounting to		$1,054,800

NOTE—Tickets drawing Capital Prizes are not entitled to terminal prizes.

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REMEMBER also that the payment of Prizes is GUARANTEED BY FOUR NATIONAL BANKS of New Orleans, and the Tickets are signed by the President of an institution, whose chartered rights are recognized in the highest Courts: therefore, beware of any imitations or anonymous schemes.

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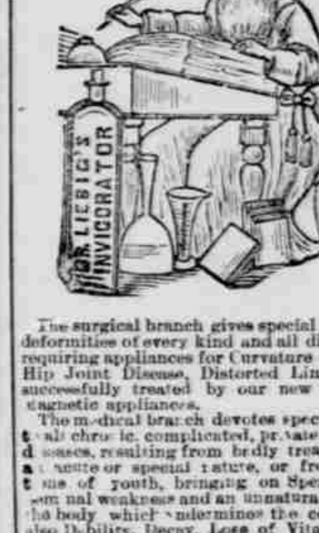

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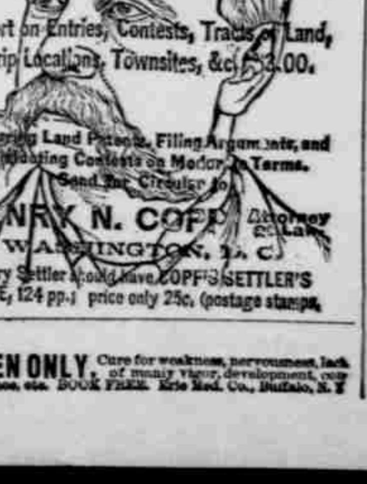

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TUCSON, TERRITORY OF ARIZONA, County of Pima, May 29 1889.

TO C. C. Stephens his heirs, executor or assigns, or those who may claim under him an undivided one quarter interest in the following described property. You are hereby notified that I have expended two hundred dollars in labor and improvements upon the following mining claim:

Blue Cloud Mining Claim, located July 24, 1880 by A. Lazard, C. E. Holbrook, J. C. Handy and D. Tirney, and recorded on September 11, 1880, in Book L. Records of Mines, page 485.

Said records all being of the Recorder's office, Pima County, Arizona, said claim being in the Santa Catalina mountains Pima County, Arizona. There is $200 having been expended in 1887 and 1888, in order to hold said claim under the provisions of section 2324, Revised Statutes of the United States, being the amount required to hold the same for the years ending Dec. 31, 1887, and Dec. 31, 1888 and that I have contributed your portions thereof. Therefore if within 90 days after the service of this notice of publication, you fail or refuse to contribute your proportion of such expenditures, as co-owner, with the costs of this publication, your interests in said claim will become the property of the subscriber under said section 2324. Your proportion of said expenditure is $25 for each of said years,

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