

THE WEEKLY HERALD.

R. E. FISK, - - - Editor.

THURSDAY, JANUARY 4, 1872.

PUBLICATION OF THE SESSION LAWS.

We have waited the matter of several days with the expectation of learning before now the name of the member introducing into the Assembly House Bill No. 30. In our issue of Saturday last, reference was had to this act, which parties in interest are concerned to have gerrymandered through the Legislature, and placed upon our statute books as a law. It is a measure, without doubt, fraught with danger of greater magnitude to the tax-payers, and consequently to the public weal, than any piece of special legislation that has ever been concocted, under the guise of contributing to the public good, in the history of law making (and law publishing) in Montana. We say special legislation, and we mean just that; for H. B. No. 30 contemplates throwing into the hungry maw of three greedy newspapers some thirty or more thousand dollars of the people's money to subserve selfish and unwarrantable purposes—while very large sum of money, otherwise properly applied, would go far toward saving our treasury from bankruptcy, and rescuing the impaired credit of our Territory from overwhelming financial disaster.

It is therefore with little complacency that we look, at this particular juncture in the crippled financial condition of Montana, upon any one of our contemporaries that invokes the aid or counsels the acquiescence of our law-makers in legislation calculated, like the act of which we speak, to do a serious and alarming injury to the Territory. From no one of the Territorial papers, save the *Gazette*, have we observed any inclination to brazenly flourish its trumpet in heralding the appearance and encouraging the passage of this act.

The *HERALD*, in a previous and timely article, denounced briefly but pointedly the scheme for enacting a measure of this character, discreditable alike to the intelligence and honesty of legislators who would lend themselves to its passage, as to those who would champion its supporters or palliate or excuse their committal of an offence so grave. As we have already remarked, the laws of the present session, the same as the enactments of previous legislatures, together with the journals of the two houses, are published under the authority and at the expense of the General Government. One thousand copies of the former and two hundred and fifty copies each of the latter, are the number which the United States authorizes to be printed and bound for distribution in the Territory. This edition has thus far proved sufficiently large to supply all our lawyers, besides our Federal, Territorial, County, and Township officers, and still leave a surplus to supply the occasional wants of private individuals, who can always obtain them from the Secretary for the asking.

The assertion of the *Gazette*, that there has always been delay in publishing the laws we do not deny. That was owing more to the failure of the Secretary in furnishing to the printer at an early date the official manuscript copy than to any other cause. The official copy of the laws of the Sixth Session was placed in our hands, as public printer, in June, and in forty days the work was completed and ready to be dispatched to the Capital. There is no reason why, (if the Secretary is not called away from his post, as was the case two years ago,) the laws and journals should not be given into the hands of the printer soon after the close of the Legislative session. In that event, no more than sixty, or, at most, ninety days should transpire before the same are published and ready in the office of the Secretary for distribution. The other assertion of the *Gazette*, in giving its endorsement to House Bill No. 30, that "lawyers and officers of the Territory have been obliged to pay out thousands of dollars to procure manuscript copies of the acts of the Legislature" is almost too reckless to merit reply. We challenge its production of evidence to show that hundreds, to say nothing about thousands, of dollars having been paid by lawyers, officers, or any body else, to possess themselves of manuscript copies of the laws, pending their publication. Small sums, we know, in a few instances, have been expended by parties interested to know the provisions of some enactment previous to being furnished with the same in print. But this has been by no means the rule, and the exceptions to which we refer have been few in number and of little importance.

The outstanding indebtedness of the Territory at the close of the present session of the Legislature will not fall much short of \$150,000! We respectfully call the attention of our law makers to this startling fact, as also to the enormous accumulation of the obligations of the several counties, together with the comparatively small number of property owners in Montana who are required to shoulder our public burdens. We notice but small inclination, thus far, on the part of the Legislature to lighten taxation, or to bring succor to the people who are anxiously looking to them for relief, or expecting measures that will answer in some degree in mitigation of the loose and prodigal legislation of our preceding Assemblies.

We appeal to our law makers at Virginia to put their foot upon this H. B. No. 30, and upon every like act which may be brought forward and attempted to be pushed through the Legislature to subserve unworthy ends, or intended to roll up against the Territory an-

other and greater volume of debt. Retrenchment, and not increase, of public expenditures is what the people require of their servants, and they demand that their voice shall be heard. Let the Legislature take heed of our words, and address itself to the legitimate works before it.

ATTEMPT TO REMOVE JUDGE J. T. MURPHY.

A report reaches us—which bears upon its face a good degree of plausibility—to the effect that efforts, looking to the removal of Hon. J. T. Murphy, Judge of the First District Court, are in the course of maturity. Our informant, whose name we are not permitted to disclose, states that a paper was recently drawn and quietly circulated among the members of the Helena bar, asking their signatures to the document recommending the supercedure of Judge Murphy. We have been unable, after considerable inquiry, to ascertain upon what pretext a scheme of this nature was concocted, or what the motive that suggested it. From the very indifferent success met with, in inducing the bestowal of signatures of weight in the profession, we judge that the reasons put forth for the Judge's removal were deemed otherwise than good or sufficient ones, and that consequently, no great encouragement was given to persevere in the undertaking.

It is undoubtedly to subserve some selfish or unworthy purpose that the supplanting of Mr. Murphy as Judge of the First District Court has been thought of, and an attempt made to realize the fruits of such a conspiracy. Of the Judge we can truthfully say, he has fulfilled in his judicial character the best hopes of our bench and bar. A conscientious Christian; a gentleman of scholarly attainments; a more than average lawyer; a patient, laborious student in his profession; and an excellent and high-minded citizen, he has proved himself a credit to the position he was appointed by the President to fill, as well as an honor to the Territory with which he has become identified as a permanent resident. He has come among us with his wife and children from a distant State, at an expense, perhaps, that his exchequer could ill afford, and is no sooner fairly domiciled in his new home than a scheme is put on foot to oust him from his office in order that some person with more cunning than character—with more buncombe than brains—may, with an unctio only equalled by his effrontery, step into the Judge's coveted shoes.

We stop to ask, when are these conspiracies aimed at the Judiciary of Montana to cease? They are as contemptible as they are tormenting, and are discreditable to all our pretensions of being within the pale of an enlightened civilization. Our Delegate, our officials, and gentlemen of reputable standing everywhere in Montana, will, we are persuaded to believe, discountenance any and all of the dirty tricks which, from time to time, are unmasked to the public as the bantlings of irresponsible politicians. With these few earnest words we close the first chapter.

"LOUVE'S LETTER."

WASHINGTON BAR, M. T., Dec. 18, 1871.

To the Editor of the Herald.

If my memory serves me aright, Lovell, in his "Winter Evening Hymn to his Fire," said:

"What warm protection dost thou bend Round certain talk of friend with friend, While the gray snow storm held aloof, To soften outline round the roof, Or the rude North with baffled strain, Shoulders the frost-starred window pane!"

If the New England poet had been here for the past month, or was even here now, I am of the humble opinion that he would think that the gray snow storm and the rude North had found a "corner" in order to put business "up" on the shelf for a season at least. Since my last was written we have had some splendid weather, but now again the clerk of the weather seems to have gotten slightly disaffected, probably owing to the fear of his having his "extra compensation" taken away, and has vented his spleen on all us poor cusses, who "haint nary a word to say." But it is an ill wind that blows no one good, so we will look on the bright side of the question. The mail from Virginia City to Bozeman makes its regular trips now; it goes the old road, however, the toll-road being impassible, as I am informed. Mr. Galen, proprietor of this route, is an indefatigable worker, and spares neither money nor time in his earnest endeavors to gratify the public. Such men are worthy of patronage, and they will undoubtedly meet with their reward.

S. D. Pinkney, Esq., has arrived from Michigan, with his family. He also brought out with him five or six other persons who purpose making Montana their future home. If every one who goes to America would do like Judge Pinkney, the beautiful valleys of our Territory would soon be teeming with the life and vigor that can only be seen in a well conducted farming community. Let the poor farmers from the East come here, and in a few years they will be well fixed in this world's goods. I see by the *Montanian* that the subject of immigration is before the Legislature. It is to be hoped that our law makers will do the right thing in regard to this very essential and vital topic, and that by the full opening of Spring, Montana may begin to reap the benefits which will very naturally accrue from a right disposition of the above mentioned subject.

Will you please answer the following: In case the Legislature passes the bill, already introduced, the substance of which is to prevent Chinamen from holding or acquiring property, will it not be in violation of the Constitution of the United States?

Ever yours, LOUVE.

FORFEITURE OF PLACER CLAIMS HELD BY ALIENS.

We have examined with considerable care House Bill No. 25, introduced in the Lower House of the Legislature by Hon. W. W. Dixon, of Deer Lodge, and find it a tolerably digested act, evidently prepared with some care and by an able hand; and should it become a law it will doubtless accomplish all that is intended and more than is expressed in the act introduced by our able Councilman, Bullock; while it is so drawn that it avoids the objection we have heretofore noticed in Bullock's bill, in being general in its terms, and therefore not liable to be adjudged in conflict with our unfortunate treaty with the Chinese Empire. There is, however, one feature of the bill to which we desire to call attention, and ask for its dispassionate consideration from our legislators before they enact it into a law.

This bill provides for the forfeiture to the Territory of all placer claims heretofore acquired by aliens. Should this act become a law, perhaps there never will be a case arise in which its execution would have to be invoked, for certainly no alien would knowingly thereafter invest his money in a species of property that would be wrested from him the next moment. But supposing such a case to arise, how would stand the equity of the case? An alien—suppose him to be a despised and despicable Chinaman—purchases a placer claim from an American citizen and pays him therefor, is it right that the aforesaid American citizen, after getting his money into his pocket, should then have the power, if he were mean enough, to turn around and enter a complaint against Mr. alien Chinaman and procure a forfeiture of the aforesaid claim to the Territory, to be sold for the benefit of the Territory, and the proceeds, what precious little would be left after paying expenses, put into the Territorial treasury? Would not such conduct be a mixture of meanness and injustice, and do we want to encourage either? Should not the alien, whose money and claim are both taken from him, have some redress to recover back the consideration money paid, or be allowed to receive the balance left after paying expenses, that should arise from the sale of the claim. It strikes us that there is an inherent injustice contemplated in the manner of the execution of this act that we can ill afford to commit upon the most ignoble of human beings.

We lack much of that legal erudition which has placed Mr. Dixon among the most distinguished of the lawyers of Montana, but we have some doubts about the right and power of the Territory to hold title by forfeiture for any length of time to placer mines. It may or may not come in conflict with section 6 of our Organic Act, which forbids our Territorial Legislature passing any act interfering with the primary disposal of the soil. We must remember that the title to those placer claims rests in the Government of the United States. Individuals, by sufrage of the General Government, hold possessory rights in these claims, according to miners' custom. How would the Territory hold the forfeited title? Would it become owner of placer claims and be compelled to work the claims as required by district laws? Would its title be any better or different from the titles of miners? Would the title it conveyed be any better?

It seems to us here is a point left in some obscurity in the act. If the conveyance to an alien is void and so declared, the title still remains in the original owner, and nothing passed in the pretended sale. Then would not the alien be entitled to recover back his money paid as an entire failure of consideration? But this act declares the forfeiture of title to the Territory, after declaring that any conveyance to an alien shall rest no title in him. What becomes of the title in this interval? If the owner parts with it and the vendee never receives it, here is a curious case of suspended animation that needs an inquest. We believe the framers of the act better than any one else can improve his bill to accomplish the ends desired by our people, without the difficulties or the injustice apparent in the act as it now stands.

PUBLISHING THE LAWS.

The *Gazette* says: "We will take the contract of printing the laws and placing the same in the hands of the Secretary for distribution within thirty days after the adjournment of the Legislature—provided that we are furnished with the copy within a week after, which is ample time."

In answer to the above, we venture to assert, without fear of successful contradiction, that neither the *Gazette* nor any other publishing house in Montana, if obliged to print, stitch, cut and bind the laws ready for delivery, could do the work at home under sixty days. Indeed, that portion of the edition of the laws and journals required to be bound in calf, could not be done in the Territory at all, for the sufficient reason that a bindery establishment does not exist here. The publication of the laws and journals have still necessarily to be published in the States, both on account of printing the work in accordance with specifications, and to do it with expedition. As we remarked the other day, the laws can thus be printed and delivered to the Secretary ready for distribution within, possibly, sixty, or more than ninety, days from the date of receiving the official manuscript copy of the same—the time required for the public printer to travel to the States, and the period required to transport the books back to the Territory both included. That is as soon as most of the States obtain the law enactments of their several legislatures, and Montana, if no worse off in this respect, has not very grievous cause of complaint.

OUR VIRGINIA CITY LETTER

The Council Library Bill—Final Disposition of it—The Code Commission Report—Judges Symes and Knowles Address the Committee of the Whole. VIRGINIA CITY, December 24, 1871.

The Council Library bill was taken from the table on Thursday, and the Council resolved itself into a Committee of the Whole to further consider it. Pending the motion to refer it back to the Council, recommending its indefinite postponement, Judge Warren waxed warm and eloquent in a speech favoring the bill, while Judge Fisher strenuously opposed. The motion prevailed, and the bill can not again be resurrected in the Council this session. But the persistency with which the Democrats work when an extra office and salary are in sight, can best be understood when it is recorded that no sooner was this bill past the reach of the Council than Lowry, of Lewis and Clarke, gave notice of a similar one in the House, and there is a possibility of its yet becoming a law.

The Code Commissioners' reports are receiving that consideration which their importance demands, by the Joint Judiciary Committee. Judge Warren had assigned to him the revision of the Civil Practice Act, Judge Knowles the Criminal Code Act to revise and amend, and Judge Symes the arranging of the General Laws. The former two will be re-enacted by the present Legislature, and will be printed as laws of the Seventh Session. Judge Symes yesterday handed in his report, and the Council went into Committee of the Whole to consider it. For the better information of the members, the Judge was called upon to address the Committee. In his remarks he stated that he had given considerable time and attention to the task which had been assigned him: had alphabetically arranged in chapters all general laws and amendments thereto enacted in and since the Bannack Legislature, with margin notes, date of amendment or repeal, etc., which would enable any person to turn to and examine the whole of any law in five minutes; whereas now, a lawyer, in order to give a client a correct answer upon any question of law, must thoroughly examine as many books as there have been sessions of the Legislature; he thought all acts of the present session should be placed in their proper chapters in the same book, and then Montana would have a statute equal in simplicity of arrangement to that of any State. The technicality in reference to printing these re-arranged old laws with those of the present session, the Judge thought, could be remedied by an act of this Legislature, and the additional expense would be trifling compared to the increased value. Judge Knowles was then called upon, came forward, and substantiated Judge Symes' remarks as to the superior value of the book as combined, but understood that the Secretary would not pay for the same. The subject is again made the special order for Tuesday next, at 11 o'clock a. m.

No session to-morrow—Christmas. Roast turkey, chicken, ball, etc.

JUDGE.

A Christmas Dinner—Judge Beck on Public Highways—Mr. Searles' School Bill—Reply to Wilkinson, Sr., etc.

VIRGINIA CITY, December 27th, 1871.

To the Editor of the Herald:

Knowing that force of circumstances placed many persons far from home, and upon the bounty of Capitolians for holiday dinners and entertainments, Judge Murphy and lady, out of the goodness of their heart, (they twin are one,) devised and executed a plan which made glad the hearts and stomachs of twenty or more on Christmas. At their residence, by special invitation, there assembled Dr. Mitchell, President of the Council; Harry Comly, Speaker of the House; Hons. Owen, Fisher, Lawrence, Beck, Lowry of Lewis and Clarke, Lowry of Jefferson, Dixon, Stapleton, and Vivion—Joint Judiciary Committee; Judges Symes, Warren and Knowles, Code Commissioners; Judge Hosmer, wife and daughter; Auditor Rodgers and wife; Theo. Mully and wife; Mrs. Stapleton, Mr. Hall, Fred. Cope, of the *Montanian*; Henry Wilkinson, of the *Gazette*, and the "Judge." As was intended by the affable host and make-you-feel-perfectly-at-home hostess, both contributing towards the sociability of the occasion very materially, everybody felt merry. At the proper time, to a table which almost weakened under its avoirdupois of roast turkey and everything else good, we sat down and displayed a genuine appreciation of the evident care taken to gratify the most epicurean palate or exacting appetite. Never, since leaving in early life her sheltering roof, protecting counsel, and generous board, have I been so forcibly reminded of "my aunt's real old-fashioned Christmas dinners." After dinner, parlor entertainment and amusement were kept up until nearly dissipating hours, when the reluctant "good evenings" were said. Judge Murphy and family, we understand, are soon to take up their residence at Bozeman. In the Judge Virginia will lose an enterprising citizen, an honorable and high-minded gentleman, and in his wife one of its brightest stars from the firmament of its social circle.

Legislative matters are again under way and progressing favorably. Judge Beck has introduced a road bill in the Council, compelling each able-bodied voter in the Territory to work from two to four days on some road, or pay from eight to twelve dollars in lieu thereof.

Mr. Searles' School bill has been thoroughly examined in committee, and reported back

for passage, with a few necessary amendments. It is pronounced to be a law which will meet the felt wants of the educational interests of Montana.

I notice that Wilkinson, Sr., in wishing to say "something" in his lone correspondence to his paper, takes up the championship of the member from Deer Lodge, who, says Mr. W., has been the recipient of "scurrilous abuse" at the hands of the *HERALD* correspondent. Now, Judge Wilkinson knew when he penciled those two words, "scurrilous abuse," that he was putting on paper that which was false, for he was well aware that my letter dealt leniently with the West Side member. Mr. Wilkinson also knew that said member had been "but poorly" for days previous to that mentioned, and that he has continued in that condition to the present time, with no apparent prospect of "getting any better," and yet, "W." cries "scurrilous abuse!" Now, the member, as an individual, is a real good-hearted, hospitable man; but as a Representative of the people he has not proved a startling success. If the "senior" can't find some other legislator to champion than the member from Deer Lodge, nor something to write his paper except untruths, the quicker he returns to the guardian protection of the "junior" the better it will suit the majority of the legislators here. The fact is, the flock over which the senior editor of the *Gazette* naturally expected to cast saving grace, don't appear to care much about anything of a "saving" nature save extra compensation. In the language of Lowry, of Lewis and Clarke, in urging upon the House a more expeditious legislation, "Our session is half over and but a few resolutions or bills have been signed by the Governor; we have accomplished but little as yet, and for these reasons I am in favor of doing more work in committee and taking up less time in printing bills." To divert the people's gaze from these things, the *Gazette* correspondent endeavors to get up a "counter irritant." He's sharp! JUDGE.

ACCIDENT ON THE N. P. R. R.

An accident on the North Pacific Railroad, near its present terminus on the Red River of the North, occurred Dec. 11th, by which, among others, Mr. Canfield, President of the Board of Construction, and Messrs. Geo. A. Brackett and D. C. Shepard, contractors and well known Minnesotians, were severely injured. The *St. Paul Pioneer* says:

"The train to which the accident occurred was composed of thirty-nine flat cars, one box car, and two locomotives. They had been out to the end of the track to carry material needed in the construction of the road, and were backing into Oak Lake. The box car was attached to the locomotives, and in it were fifteen or twenty gentlemen. Mr. Brackett says the accident was caused by the rails spreading, (owing to the scarcity of spikes, they had not been fully secured,) under the locomotives, and as soon as the ponderous engines were thrown from the track, the box car was also thrown off, and a general smash-up followed, in which the caboose was thrown down an embankment of ten feet, totally wrecked and left bottom side up. Mr. Brackett's injuries consist of a compound fracture of the left thigh, involving somewhat the knee joint. His face was also considerably bruised. Mr. Shepard suffered dislocation of the right arm and shoulder, and was otherwise injured, though to what extent cannot yet be fully determined, owing to its swollen condition. It is possible that the shoulder is fractured. Both the gentlemen sustained severe bruises in addition to the injuries above given. Their injured limbs were properly set and the wounds dressed, as were those of Mr. Canfield, which were of a serious and painful nature. His nose was terribly cut and his face and hands badly bruised.

Our attention is called to a communication signed "Two Tax Payers," which appeared in the *Montanian* of the 22d, but which had not been noticed until to-day. "Two Tax Payers" treat of "extra compensation," and dish up a paragraph in which they mix this journal in their discussion. Say those "Two Tax Payers":

"First we have an editorial from the *Daily Montanian*, then a letter from 'Pro Bono Publico,' Thursday a leader from the *DAILY HERALD* endorsing 'Pro Bono Publico,' fourthly, a letter in the *DAILY HERALD* of the 14th inst., signed 'A Citizen,' again an editorial in the *DAILY HERALD* in which it seems to go back on 'Pro Bono Publico,' and substantially endorses 'A Citizen.'"

Now those two fellows who pay taxes and join in scribbling the above questioning the consistency of the *HERALD* upon the matter of "extra compensation," had best do one of two things: take back their assertion so far as it applies to this journal, or jump out with their documentary proofs. We challenge their production. We advocated the abolition of "extra compensation" years before some of the people now numbered among our population even thought of coming to Montana. Out with the evidence of our defection.

We observe that the *Gazette* studiously avoids counseling or encouraging retrenchment of public expenditure on the part of the Legislature. On the contrary, it seems disposed to champion a continuance of that inordinate extravagance of mal-appropriation of the people's money that has so especially distinguished our former Assemblies. We call the public to witness that we do not misrepresent the organ of the Democracy in this respect. We shall hold it to account in the future for such conduct, which it can neither excuse nor palliate.