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Times and Places for Holding Courts in the Territory of Montana.

SUPREME COURT.

At Virginia City, first Monday in January and second Monday in August.

UNITED STATES DISTRICT COURTS.

First District—At Virginia City first Monday in April, second Monday in July, and second Monday in November.

Second District—At Deer Lodge, third Monday in April, first Monday in September, and first Monday in December.

Third District—At Helena, first Monday in March, first Monday in July, and fourth Monday in October.

TERRITORIAL COURTS.

First District—In Madison County, at Virginia City, first Monday in April, second Monday in July, and second Monday in November.

In Gallatin County, at Bozeman, first Monday in March and fifth Monday in October.

In Jefferson County, at Radersburg, second Monday in May, and first Monday in October.

Second District—Deer Lodge County, at Deer Lodge City, third Monday in April, first Monday in September, and first Monday in December.

In Missoula County, at Missoula, fourth Monday in June and second Monday in November.

In Beaver Head County, Bannack, first Monday in June, and third Monday in October.

Third District—In Lewis and Clark County, at Helena, first Monday in March, first Monday in July, and fourth Monday in October.

In Meagher County, fourth Monday in May and fourth Monday in November.

WATER RIGHTS DEFINED.

An Important Decision.

J. F. Thorp, et al., versus Oscar P. Freed, et al. } District Court.

This was one of a series of actions brought by the plaintiffs against the defendants—all the parties being farmers in the Prickly Pear Valley. The plaintiffs' farms are scattered in various parts of the valley, and they claim all the waters of Prickly Pear creek for use on their farms for the purposes of irrigation during the cropping season, because of an alleged prior appropriation thereof; allege the use thereof by defendants, who are farmers on the stream above, and they pray an injunction restraining defendants from such diversion.

The nature of the case will further sufficiently appear in the extract from the opinion given below by Chief Justice Wade:

* * * * *

The proof shows that a portion of the waters of Prickly Pear stream were taken up and appropriated, prior to the appropriation of the plaintiffs or defendants, and that the appropriations of the plaintiffs were all prior to those of the defendants.

That the appropriations of the plaintiffs were several, and made for the purpose of irrigating their several ranches, and that a portion of these ranches are situate on and contiguous to the stream, while others are several miles therefrom, and water for the purpose of irrigation is conducted to the several ranches by means of ditches.

The proof further shows that the ranches of defendants are contiguous to or on the stream, and above the ranches of plaintiffs, and that water is taken therefrom for the purpose of irrigation, and that such diversion was subsequent to the appropriations of plaintiffs, and the defendants claim that their subsequent diversion and appropriation does not injure or damage the rights of the plaintiffs, for the reason that the waters of the stream are sufficient to supply the requirements for irrigating purposes of both plaintiffs and defendants, and it is further in proof that both plaintiffs and defendants are the owners of their respective ranches, and that the Government has parted with its title, or that such steps have been taken to bring about this result.

The importance of the questions presented by this record cannot be over-estimated. The wide and extended valleys of our Territory, rich in soils and capable of producing ample returns to the husbandman for his toil and labor, are dry and arid, and the climate producing no rains to moisten the ground, the farmer is compelled to resort to irrigation to produce and bring to perfection the products of the earth. The streams that course through our valleys are probably insufficient to afford water to irrigate all the lands that might be successfully cultivated but for the want of water. And this perplexing and important question as to how this insufficient supply of water for the purpose of irrigating shall be distributed and divided among the riparian proprietors and others along any given stream is presented for adjudication and decision.

We propose to consider the following questions as applicable to the case:

1st. Have the plaintiffs such a common interest in the waters of the stream as to entitle them to join in bringing this action?

2d. Does the doctrine "prior in time, prior in right," as applied to the waters of mineral lands upon the public domain, also apply to the waters of a stream in an agricultural or farming district, as to lands situate upon or contiguous to such stream where the title to such lands has passed from the Government to the riparian proprietors along such stream?

3d. Was this case properly tried to the court sitting as a chancellor, or should it have been submitted to a jury?

1st. Our code provides that every action shall be prosecuted in the name of the real party in interest. If these plaintiffs are to be treated as riparian proprietors, as at common law, and having an interest or property in the water adjoining or running through their farms, and such a property therein as that an injury to the stream would injure their property, then they would have such a common interest and property in the stream as would entitle them, even at common law, to bring this action. If the waters of the stream are injured, polluted, or diverted above the farms of the plaintiffs, the injury is common and general to all the riparian proprietors below, and for such an injury or diversion, all such proprietors below the point of injury, and having a property in the waters of the stream could well be joined in bringing an action for the common injury.

There is another view in which the joinder of these plaintiffs is sustained. This is a suit in equity, asking for equitable relief, and for the purpose of preventing an innumerable multiplicity of suits; these plaintiffs having a common cause of complaint, are properly joined, and in such a case a court of equity would order all parties having a common interest in the controversy and rights in common to be adjusted, to be brought into court and if separate suits had been commenced for a common purpose, that they be consolidated.

In this view of the case, it would be proper to join all the riparian proprietors having a common interest and property in the waters of a stream from and below the point of injury to the mouth of the stream.

Again: If the plaintiffs are to be treated as prior appropriators, and thereby entitled to the use of the waters of the stream, as against the defendants, then it is true that they would have a common interest in the water, while it is in the bed of the stream, and any injury thereto, or thereof, is a common injury.

If the right to the waters of the stream are owned by numerous different owners in different proportions and amounts, yet while the water is flowing in the stream, and is undivided, the several owners have a common property therein, as joint owners, and an injury to the water is an injury to their joint property, and thereby a right of action to all such owners would accrue, and the property being in common and undivided, all the joint owners thereof can join in bringing the suit, and if the appropriations were of different dates, as well as in different amounts, a like rule as to bringing the action would apply. If this was not the case, then each owner on the lower stream, severally and for himself, must bring an action to enjoin the injury or diversion above him; and if it is the province of equity to prevent a multiplicity of suits, then this suit is an action where that principle is rightfully invoked.

2d. The second proposition necessarily leads to an investigation of the rights of riparian owners at common law, and also to the applicability of that law to the wants, needs, circumstances and conditions surrounding the people of this mountain and mineral region; and it would not be unsafe to say that the common law, so sacred to every lawyer and jurist, and formed as it was from the customs, usages, habits and thoughts of a people of a different climate from our own, where the rains caused an abundance of moisture for farming and agricultural purposes, and the annual crops were produced and perfected without the art of irrigation, cannot be followed in its strictness and its technicality, in a country where the physical conditions and the nature of the climate render it impossible. But if we can discover the reason of the law and the principles upon which it is founded, and the natural wants and requirements of the people, for whose prosperity and benefit the law was instituted and established. We have then a foundation from whence, by analogy and deduction, we can apply the principles we have found, to other peoples surrounded by other and different circumstances, wants and conditions. And so the principles and the reason of the common law adapts itself to every climate, and to the physical conditions of every country, as dictated by the natural wants of the people in whose behalf the law is invoked.

The common law declares that a stream begins at its source, where it comes to the surface, and the owners of lands adjoining it have a natural right to the use of the water from its source to its termination.

A river or stream, of common right, belongs to the proprietors of the land between which it runs, to each that part nearest the land, and this rule is mainly derived from the fact that the riparian proprietor is the owner of the soil under the water, and by the general law of property, becomes entitled, as of right, to all accessions. And therefore it is that a grant of land conveys to the grantee not only the field or meadow, but all growing timber or water, standing or being thereupon; and thus it is that a stream of water becomes the property for certain uses of the owner of the soil over which it passes. It has therefore been held that the right to a water-course is a part of the freehold of which no man can be dissiezed, but by due process of law—"Angel on Water Courses."

The owners of water courses are denominated by the civilians "riparian" proprietors, and the use of this term is now fully introduced into the common law. The soil of the bed of the stream itself, and consequently the water, may be and most often is divided between two riparian owners: that is, the land on one side may be owned by one person, and on the opposite side by another; when such is the case, each proprietor owns to the middle of the stream. There is but one difference between a stream running through a man's land, and one which runs by the side of it; in the former case he owns the whole, and in the latter but half—(Starr vs. Chelt: 20 Wend, page 149.

If the proprietor of a large tract of land, through which a stream of water flows, sells parcels thereof above and below him, each grantee would take his parcel with full right to use the flowing water on his own land, subject to the rights of proprietors above him.—(Angel on Water Courses.

The right to the flowing stream thus becoming a part of the freehold, and passing with the land. To what uses can each proprietor put the water as it flows through his land?

By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of water flowing past his land; for instance, to the reasonable use of the water for domestic purposes, and for his cattle; and this without regard to the effect which such use may have in case of a deficiency upon proprietors lower down the stream. But further, he has the right to use it for any purpose, or what may be deemed an extraordinary use of it, provided he does not thereby interfere with the rights of other proprietors either above or below him; subject to this condition, he may dam up the stream for the purposes of a mill, or divert the water for other purposes. But he has no right to interrupt the regular flow of the stream, if he thereby interferes with the lawful use of the water by other proprietors, and inflicts upon them a sensible injury.—(12. Moore, P. C., p 158.

In other words, each riparian proprietor has the right to use the water of the stream to quench thirst, for culinary purposes, and for the use of his cattle; and this, although such use may injure the proprietor of the lower estate; and he can use the water for other and speculative uses, if he does not thereby interfere with the flow of the stream or diminish its quantity or quality.

Thus speaks the law in a country where the rains sufficiently moistens the earth to produce and ripen the fruits thereof, and where irrigation for the purposes of agriculture are unknown, and it will be observed with what zealous care the streams and water courses are guarded and protected, and the reason for this care is the fact that the waters of a flowing stream, as it enters the lands of different proprietors, and while it remains thereon, becomes a part of the freehold, and as it is supposed to be used to support and sustain life, and derives its peculiar value from this important use, the law declares that it must enter the lands of each owner through which the stream passes, undiminished in quantity, and so pure and unpolluted as to be fit for this primal use and purpose.

We have now arrived at this inquiry, and following the reasons and analogies of the common law, we ask: To what uses may the waters of a stream be applied by the riparian proprietors thereof, who are engaged in the pursuits of agriculture and farming in a dry and arid country, where the scarce rains do not sufficiently moisten the earth, and irrigation is necessary to the successful production of crops.

It must be kept in mind, that water, by the general law, can be used to sustain life, and for domestic uses by each owner of the land through which a stream passes, and we say that in the country we have described, with such necessities and conditions, and in the agricultural districts thereof, this proposition can be maintained. That water for the purposes of irrigation, naturally belongs to each riparian proprietor in certain proportions as water for culinary purposes belongs to such proprietor at common law. Water for the purposes of irrigation in such a country is equally necessary as water to sustain life, for it would be next to impossible to support life unless the farmer can use the water of the stream for the production of food for the people. The resources of the country cannot be developed, and our valleys cannot be reclaimed and become inhabited unless the waters of the streams can be used in an equitable manner, to cause the earth to bring forth its fruits. So then we say that water for irrigation in this country as naturally belongs to the lands through which the stream passes, as in other countries it belongs, it belongs to the land to supply the necessities of life. Irrigation in this country is what rain is to other countries, and a monopoly of one would be equally as appropriate as that of the other, and equally sustained by any principles of justice and equity.

The law in aid of justice and equity, must conform to the peculiar and unusual conditions surrounding each country where it is administered, and the farming interests of our Territory can only be crowned with success when a fair and equitable distribution of our scanty water is accomplished.

Let us examine the doctrine in an agricultural community as applied to mining districts, that the first appropriators of the waters of a stream acquire an absolute property therein, as against every one except the Government, and that they can hold the same against all subsequent appropriators thereof.

In the first place, this doctrine leads to a monopoly in water, which, in the language of one of the witnesses in this case, is "more precious than gold." An illustration may be useful. Suppose that ten men locate a farm each of 160 acres upon the banks of a stream whose volume is 3,200 inches, and with ditches appropriated the waters of such stream. If two inches of water is necessary to the successful irrigation of an acre of land for the season, or three hundred and twenty inches of water for 160 acres, each man would be entitled to 320 inches of water, or ten men 3,200 inches. And if each of these men, year after year, should not wish to cultivate but 60 acres each of their land, or 600 acres altogether, yet they could hold the 2,000 inches of water they did not use; and if subsequent locaters above them on the stream should attempt to appropriate any of the waters thereof, an injunction would be to restrain them from so doing, and thus 1,000 acres would be wasted to cultivation.

The prior appropriator, by virtue of this doctrine can hold sufficient water to irrigate the land he locates, and if he takes 160 acres of land he can also appropriate sufficient water to irrigate the same, and yet he may not, in fact, and may never intend to cultivate more than one-third of his land. Can the subsequent appropriators of water be deprived of water in this manner? And is it not the true policy of this Territory to erect such a system of laws here as shall distribute our short supply of water to the best advantage of all the people.

An examination of this doctrine of prior appropriation as it affects the interests of the general government may not be out of place. The United States is the original proprietor of the soil, and as such, has the right to make a final distribution thereof. This is a sovereign prerogative, and here is the deposit of this sovereign power. The proceeds of the sale of the public lands are a fruitful source of revenue to the government, not only as to the amount received therefor, but in a much larger sense, in extending the area of our civilization and opening up to our ever increasing population cheap lands for cultivation and improvement. Now, if the doctrine of prior appropriation and the rights thereby accrueing is to prevail, this consequence must result. A few men may locate their farms near the mouth of a stream and appropriate the water thereof, and subsequent locaters up the stream are guilty of a trespass if they undertake to use any of said waters, and an action could be prosecuted and maintained against them. The result is, that thousands of acres in our valleys must remain barren deserts which, with an equal and just distribution of water, all might be cultivated. Thus, the prior appropriator renders vast tracts of land utterly worthless, and their sale is lost to the Government and their cultivation to the people. Such a doctrine is against public policy, and crippies the life of the industries of the Territory.

The doctrine of prior appropriation goes to the extent of declaring that he who first appropriates the waters of a stream requires an absolute property therein as against all the world except the Government, which property is capable of being bought and sold, inherited and transmitted from generation to generation, like other property. This paramount right of the Government, in its sovereign capacity, to make a final and absolute disposition of its lands, and the water thereof, will serve to place this doctrine of prior appropriations where it rightfully belongs.

Let us suppose that A, by means of a ditch appropriates the waters of a stream, and that he is the first appropriator thereof. It is insisted that he can hold this water and this right as against all excepting the Government of the United States. Grant that this is so and what follows? The Government, retaining an absolute property in the soil and waters thereof, and having the right to make a final and absolute sale, when it comes to sell to subsequent locators upon the supposed stream, what interests does the purchaser thereby acquire? What rights does the grantee thereby succeed to? Can it be doubted that the grantee in case of such sale from the Government acquires and succeeds to all the rights of the grantor? If so, an inquiry into the rights of the grantor is in point. What are the rights of the grantor, which is the Government of the United States? It has an absolute property in the soil, and the waters flowing over it, and has the right to sell both, and the purchaser takes all the grantor's title; and here we apply the principles of the common law and say that such a purchase takes the waters flowing upon the land as a part of the freehold.

In the case before us both plaintiffs and defendants have acquired titles to their lands from the Government, and when the title passes from the Government to riparian owners, the rights acquired by prior appropriation, as applied to Government lands, while the title is yet in the Government, and the occupiers are mere tenants at will, is not applicable and falls to the ground. Conceding the fact that the Government retains the right to the final disposition of the soil, and the waters flowing over the same, and this result must inevitably follow, and each purchaser from the Government lands along the stream acquires all the title of the grantor, and this title carries with it property in the soil and the waters naturally flowing over the same. If this is not the case the prior appropriator takes title to the water as against the Government.

We therefore conclude that the doctrine that he who first appropriates the waters of a stream can hold the same as against subsequent riparian owners, for the purposes of irrigation and agriculture, is inapplicable to lands situate along the banks of a stream where the title to such lands has passed from the Government to the riparian owners, for the very act of transferring the title carries with it the freehold, and this includes a title to the water that flows over or along the boundary of the lands thus transferred.

Is there anything in the statutes of the United States or of the Territory to conflict with this view?

The Organic Act, sec. 6, in defining the powers of the Territorial Legislature, declares that "no laws shall be passed interfering with the primary disposal of the soil," and therefore any law of the Legislature that in any manner depreciates the value or worth of the soil and the property of the United States therein, is such an interference with its disposal as would render any such law nugatory and void. And if the doctrine of prior appropriation, and the rights incident thereto causes the lands of the Government to become utterly worthless, making it impossible to dispose of the same, where before the application of such doctrine or the accrueing of such rights the lands were valuable, such legislation or such customs would be in conflict with the rights of the United States and a violation of the Organic Act.

Does the Act of Congress July 26, 1866, come in conflict with the position we have taken?

That act provides as follows: "Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local laws, customs and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed. Provided, however, That whenever after the passage of this act any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage."

A careful perusal of this section will establish the fact that the law applies only to the public domain where the title is still retained by the Government and the occupiers thereof and the settlers thereon are mere tenants at will. The act declares that if the possession of any settler on the public domain is injured by any ditch he shall receive compensation for such injury. It is evidently speaking of the public lands in which the Government has the title, and having given the right to enter upon such lands, this law was designated simply to protect the possessory rights of the tenant at will or the occupier, and does not and cannot apply to lands in which the Government has alienated its title, and has conferred upon its grantee all the title of the grantor, for the reason that, after the lands have become the absolute property of the private individual or owner, the United States has no control over them and cannot legislate this private property into or out of such owner's possession or in any manner disturb him in his rights.

What are the customs, laws and decisions of the courts in this Territory upon the subject of priority of possession and water rights for irrigation and agricultural purposes?

That there is no uniform custom on this subject, this suit and others now pending can abundantly testify. The first law on the subject by the Territorial Legislature was that of January 12, 1865, and this act utterly annihilates the doctrine of prior appropriations, and divides the waters equally between the riparian owners. This act remained upon the statute book and in force, and was called into requisition in 1869, as the proof herein shows, to define the rights of the parties to this suit and others to the waters of Prickly Pear creek, and although subsequently declared void for some defect by the Supreme Court, and repealed by the Legislature of 1870, it subserves the purpose of showing that there was no statute of the Territory giving priority to the appropriator of water before or at the time the rights of the parties to this suit became fixed. And it is further believed that there is no decision of our Supreme Court, as there is none of the Supreme Court of California, which establishes the doctrine of prior appropriation, and the rights thereby accruing as applicable to the agricultural districts of the Territory.

Hence we say that the law of Congress of 1866 does not subvert or change the view of this case as herein expressed.

3. Should this case have been submitted to a jury?

In our view of the case the rights of the parties are already fixed by law, and the case resolves itself into an action in the nature of an action to prevent waste or an injury to the inheritance, and is purely an action in equity and rightfully tried before the court sitting as a chancellor.

A careful analysis and comparison of the testimony leads to the conviction that some of the plaintiffs have uniformly and year after year attempted to cultivate more lands than the capacities of their ditches would supply with water, and that in consequence thereof considerable water has been wasted and lost by the overflow of the ditches.

Another fact: In 1869, when the supply of water was less than it has been since, there was about 2,000 acres of land under cultivation in the Prickly Pear valley, and the Commissioners appointed under the law of 1865 to make distribution of the water, allowed one inch of water to one acre of land, and it must be supposed that this allowance was made after a careful comparison of the number of acres with the supply of water in the stream. And although there were many estimates and measurements of the water made, in which the volume varied from 700 to 2,500 inches, the fact that the water Commissioners after ascertaining the number of acres under cultivation, allowed to each farm as many inches as there were acres cultivated, must be taken as the most satisfactory evidence of the amount of water for distribution.

We are satisfied that there is more water in the Prickly Pear creek at all seasons of the year than the general capacity of the plaintiff's ditches will carry, and even if the doctrine of "prior in time, prior in right" is to obtain, the plaintiff left water in the stream unappropriated, which the defendants, as against the plaintiffs, could rightfully divert for the purpose of irrigating their farms.

Injunction refused.

Joe Coburn Taken Down.

The New York *Sun* of a recent date relates this incident:

On Thursday night a *Sun* reporter dropped in a refreshment saloon in sixty-fifth street and Second avenue, where he found Joe Coburn holding forth to an awe-struck audience. It seems that Joe Coburn had infringed on the order of Jones Wood on that day, and bet rather heavily on Fitzgerald as the winner of the "long race." Fitzgerald had about two years ago carried off the first prize at this race, but has on the last two occasions been distanced by others. This was too much for Joe, so he felt very irate at the whole race of Scots. A brawny and stallwart Scot, in full highland costume, stepped upon the scene. Him Joseph instantly seized as a most fit object on whom to vent his wrath toward the whole Scottish faction. He rudely seized Sawney by the arm, and told him he could "lick any Scotsman on the grounds." The Scotsman told him coolly there was a doubt on the subject, and ordered him to remove his hands.

"Do you know who I am?" roared Joe.

"No," bellowed the other, "nor do I care."

"I am Joe Coburn"—

Before Joe could finish the sentence he found himself face upward on the floor. Once, twice, thrice Joe tried to recover his ground, but in vain. Baffled in his great energy, Joe thought it was high time to resort to some other weapons to decide the difficulty in his favor; but the cool and wiry Caledonian seemed instinctively to know Joe's intentions. Taking hold of Joe's groping dexter, he shook his head depreciatingly, and said:

"Na, na, mon; ye munna do that. Pistols I dinna mind a flea for."

Saying which he gave Joe's hand a wrench and a squeeze. Joe started to his feet, and after a little dursting and preliminary explanation, offered to treat the whole party.

A Sacramento lady found herself under suspicion of larceny the other day under peculiar circumstances. She was riding in a crowded railway car and occupied a seat with another lady passenger. Like a great many other women of the present day, she wore curls—her own hair, of course, but it wasn't fastened on strictly according to natural programme. By-and-by, as the train jolted along, she felt something falling about her face and neck, and in a second it flashed across her brain that her curls had become detatched! The predicament was a shocking one, but she endeavored to save herself as much as possible by quietly passing the capillary ornament into her pocket, thanking her stars that she was almost at her destination. At the station she hastened to the dressing room to repair damages to her toilet, when behold! the mirror reflected back the fact that her curls were in their proper position, and an examination of those in her pocket showed that they were not hers, but of a different color, and belonging to the lady who sat by her side in the car.

MORE LACK THAN LADY.—A correspondent of the New York *Post* writes:

"A few days since a lady was talking with the head dressmaker at Stewart's, when the dressmaker said: 'You can have a velvet train to your dress if you choose.' 'No,' was the reply, 'I think eight hundred dollars will do for a dress without the extra expense of a velvet train.' Another lady was waiting to give directions to Arnold & Constable's dressmaker. There was a large, coarse woman, her hands loaded down with diamond rings, ahead of her, giving her directions. She said: 'I want all the lace on my dress you can get on. I want real lace; I do not limit you in price; I leave you to select it. The rigging of such women is worth more than the women themselves."

AUSTRIA AND THE CISLEITHAN CABINET.—The Austrian Empire has experienced the consequences of another Ministerial change. The construction of the Cisleithan Cabinet was completed yesterday. Prince Adolph Auersperg assumes the port folio of President of the Council. Of his colleagues in the different departments Von Plener and Herr Streymer are the only persons who are known to distinction by their political exertions and public services in the past. The others are new men. The continued existence of this ducal system of Cabinet rule, under executive attempts for the maintenance of Imperial centralization, has become exceedingly demoralizing to the different peoples who are subject to the authority of Austria, as well as being highly detrimental to the interest of the country at large. The nationalities require the full right of self government, and they must have it by some means or other, constitutional or otherwise.

Under the head of "a novel cure for consumption," the Indianapolis *Evening Journal* publishes the following: "A young lady of this city, sick with disease of the lungs, was told that if she would get a young puppy and raise it, the dog would take the consumption off her hands, and she would get well. She did so, and as the dog grew it was noticed that the animal acquired a hacking cough, while the young lady grew rapidly better. In the meantime, however, she had become very much attached to her canine benefactor, and did everything that could be done for him. It was of no use, however, consumption, the fell destroyer, had fastened upon poor Jack's vitals, and a few days since he passed in his checks. The young lady is in robust health, and firmly believes that the dog saved her life."

An incorrigible bore at our elbow wants to know if W-o-r-c-h-e-s-t-e-r spells Wooster, why R-o-c-h-e-s-t-e-r don't spell Rooster.

LETTER FROM SALT LAKE.

SALT LAKE CITY, December 18, 1871.

To the Editor of the Avant Courier:

The week past in this City has been mild and pleasant, without snow until last night, when it fell to the depth of two or three inches. So that this morning our ears are greeted with the merry ringing of sleigh bells. The fun and music will soon be over as old Sol is fast melting the white covering of mother earth.

The excitement of the week have been the arrest of a goodly number of the *demi mondes*, who were tried by John Clinton, Alderman and ex-officio Justice of the Peace. They were fined, of course, and in default of the *vino* were committed until fine and costs were paid. The old English writ of liberty *habeas corpus* was sued out before Associate Justice Hawley and a hearing had, whereupon the *fair but frail* were allowed to go their way rejoicing—for the simple reason that friend John as Alderman could not be under the Organic Act ex-officio Justice of the Peace. Let me parenthetically say, that the jurisdiction of the Courts of Utah is just now terribly mixed.

The other cause of excitement and street gossip has been occasioned by the arrest of three men by the names of Burt, one of the present police of the City and Blythe and Timms, each residents of this City. The examination is now going on before Chief Justice McKean. The parties are charged with murdering Doctor Robinson of this City some years ago. So far the prosecution have not made, in the opinion of your correspondent, a very strong case; but as the investigation is not through with it may be that the telling shot is yet to be fired. As old Tom Ritchie used to say, up this—*nous verron*.

The Legislature of the Territory meets in this City on the 8th of January. Your correspondent will keep you posted upon all matters pertaining to their deliberation, that may be of interest to the readers of the COURIER.

An examination of the Statutes of Utah convinces me that very much legislation is now required under the changed order of affairs here.

The Common School system of the great West and Northwest so far has had no place upon the Statute book of Utah. The law relative to Estates Decedent is but a mockery and should be repealed and another, full, complete and such as the interests of the people require, adopted.

The law of descent and inheritance should be amended.

In short, as I have said before, much legislation is required; and the people should be taught that there can be no difference in this Union of States—between the law of the Mormon and what they are pleased to call Gentile law. Laws to be beneficial must always be uniform, and their observance is incumbent upon all without regard to religious or political opinion or prejudice.

The question is one of great interest to Mormon and Gentile of the admission of Utah as a State by the present Congress.

The opinions of the Gentiles as expressed here is adverse to admission at this time for the reason as urged, that if we were admitted as a State that such legislation would be had and such a policy would be adopted and pursued by the Mormons that it would necessitate an exodus on the part of the Gentiles, and such discrimination would be made against the gentile population that it would be impossible for them to remain.

I frankly say that I can not see cause for such fears. The Mormons are as other men—the law of interest and self preservation is as dear to them and acts with as much force upon them as it does with us. They are shrewd business men and love the good things of this world as well as others. They are kind and now that the Territory has been by Railroad placed and brought in *juxtaposition* with the rest of mankind they must be subject to all the influences—both social, moral, religious and political—that men are governed by elsewhere. That many of them have been, and are now, fanatical—and to us seem to be even superstitious, I admit—but that the body of the Mormons are, I deny.

Utah admitted, with such a Constitution as she must adopt to be admitted, officered both in Legislative, Executive and Judicial Departments by men of her own choice and election, Standing forth as one of the Sovereignties of this great Republic, she will feel the responsibility of her situation and strive with all the talent, energy and enterprise she possesses to be equal to the responsibility, and will add to her population and wealth until the oppressed of every land shall find peace and repose in each and all of her fertile vales.

The cause of much of the confusion and complaints now heard in Utah is to be found in the fact of meddling on the part of the Cragins and their ilk with that which does not, nor ever did, concern them in Utah, and the further fact whenever United States officials have chosen to fall in with the ideas, plans and purposes of this people, Government has at once removed them and sent others, who would to say the least, deny the right of the Territory to do anything, even though of local interest and application.

Utah a State, and these grievances cease. The people will feel more at home and will endeavor to pursue such a course both at home and in the National Council as shall redound to the greatest good to the greatest numbers.

I for one favor admission. As for polygamy it is like everything else. If wrong public opinion, not legislation, will cure it, and nothing will so tend to give an expression and bring to bear this opinion upon any subject as when you make men feel that they are their own masters.

The mining interest of this Territory seems to be very prosperous and on the advance; and it is fair to conclude from the interest manifested, and the preparation now being made that the production of the precious metals of 1872 will exceed in quantity and value those of any previous year.

The business of this City is steady and prosperous, but to strangers it seems difficult to break in. Let me here add a word of advice to my mountain friends. It is this. Very many of them seem to think that Montana is dull and if they only could get away they would be able to do better.

My observation and experience for the last three months here is that you cannot. I have met scores of Montanians here who have, as they say, come down to "winter," and in no instance have I found one that did not regret the step. Work is very difficult to obtain, and when you succeed it is at low wages or price. And the difference in the cost of living is not what it has been represented. All items of expense being considered. Yours,

WANDERER.