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Содержание

THE LAWS OF LAND	5
LIFE IN THE "FAR WEST."	21
Конец ознакомительного фрагмента.	34

Various Blackwood's Edinburgh Magazine, Volume 64, No. 393, July 1848

THE LAWS OF LAND

A Treatise on the Succession to Property vacant by Death. By J. R. M'Culloch, Esq. London: Longmans, 1848.

Mr M'Culloch's book introduces us to a question much debated in this age of class jealousy. As soon as we open it, we are straightway environed with "a barbarous noise of owls and cuckoos, asses, apes, and dogs," amid whose jargon of phrases rises loudest and most frequent the cry of "commercial principles." It is a great grievance, it seems, that land should not be disposed of according to "commercial principles;" that hill and holt, and moor and dale, should not pass from seller to buyer with the same readiness as candles and calicoes. Truly we have enough, and more than enough, of these same commercial principles in all walks of thought. Even the pulpit is not free from them. Politics are positively smothered with them. Ethical science, with the shallowness of Paley and Bentham round her neck, struggles feebly with them. The book-keeper is abroad every where, with an indestructible faith in double entry. The Spirit of the Age wears a pen behind his ear, and sits on a high stool with three legs. That the prevailing commercial principles should have been so long excluded from the absolute possession of our laws of land, and that those laws should have preserved to a time like this so much of their feudal character, is a notable proof of the adaptation of the laws to the general requirements of the community, and of the steadiness of that social system which is so essentially linked to the maintenance of these laws.

The cry of complaint to which we have above alluded, is inspired by many diverse motives. As Mr Cochrane's ragged followers flocked to Trafalgar Square to denounce the income-tax, so many a man takes up the shout against the law of primogeniture and entail, as tying up lands and restricting their sale, who never had the wherewithal to purchase a single acre if all broad England was in the market. On the other hand, the purse-proud citizen, sore that ready money is not yet quite at the top of the tree, and that he does not receive the same consideration at St James's as in Change Alley, delights to have some grievance whereon he can vent his spleen; and really, in some stolid instances, persuades himself that he is kept out of the land which his gold could buy, through the agency of aristocratical laws, as if George Robins had been a mythical personage, or the advertisements of Farebrother, Clark, and Lye were a mockery and delusion.

But the largest class of assailants are those who come to the debate fortified with certain specious economical arguments, generally derived from a one-sided view of some particular effect of these restrictive laws. To the demolition of these objectors Mr M'Culloch's work is more immediately addressed; and very effectually, in our opinion, does it accomplish its end. He has not, perhaps, treated the subject so widely as it might have been treated: he has not entered into the indirect social influences that might be traced to our system of the laws relating to land; but the economical part of the question he has grasped most completely, and supported by most able and practical reasoning.

We must, we suppose, look for the text of the work, not where the text is usually found, but at the end. The following sentence, which is almost the concluding one, may be taken as the leading proposition of the work: —

"A powerful and widely-ramified aristocracy like that of England, not resting for support on any oppressive laws, and enjoying no privileges but which are for the public advantage, is necessary to give stability and security to the government,

and freedom to the people. And our laws in regard to succession being well fitted to maintain such an aristocracy, and, at the same time, to inspire every other class with the full spirit of industry and enterprise, to change them would not be foolish merely, but criminal, – a *lèse majesté* against the public interests." – P. 172.

It must not, however, be supposed from this remark, that any portion of the work is appropriated to a set defence of government by means of an aristocracy. By an aristocracy we mean the deposition of political power in the hands of men of leisure and education, as opposed to the tendency of the Reform Bill, to transfer the governing functions to the "practical" men of the trading and moneyed interests, and the analogous claims of Chartism, founded on Jack Cade's complaint, that the "king's council are no good workmen." In England, we are pretty sure to have an aristocracy – that is, the influences which affect government and legislation will emanate principally from that class which is socially at the head of the nation; and the question is, whether we are to have a mere moneyed aristocracy, or one qualified by those mixed and undefinable conditions which, more than any thing else, act to keep down the growing and eager ascendancy of wealth *per se*. Among the safeguards of such an aristocracy as we have described, not the least powerful is to be found in the laws discussed in the work before us. Mr M'Culloch, as we have said, assumes the importance to the country of preserving the present characteristics of British aristocracy; and he therefore proceeds at once to show how the laws on which he treats operate for this preservation, and to rebut the objections advanced against them on the score of their relations to other classes of the community.

One of the most frequent of these objections is, that the laws in question tend to diminish the productiveness of the land, and thereby inflict a serious injury on the community at large; that they prevent, in many instances, the landlord from granting leases to his tenant beyond the term of his own life; that the tenant, in consequence, is not willing to incur the outlay of drainage and other expensive improvements, because he is not secured by a lease; while the landlord, on the other hand, will not enter into these expenses, because he does not feel the same interest in his limited estate which he would in the unconditional fee-simple.

Note first of all the logic of this argument. The tenant, it seems, will not spend his money in draining without a lease. As, however, a lease would suffice to induce him so to do, we might naturally suppose that the landlord's estate for life, or in tail, would be at least an equal inducement. These reasoners, however, aver, that the landlord is only to be tempted by the unrestricted fee. According to this progressive scale, it might be fairly, argued, that the tenant, on becoming lessee for years, would still require the landlord's life-interest; and the latter, when seised of the fee, would decline the requisite expense, except on a guarantee of immortality, and justify himself by Horace's authority, —

"Tanquam
Sit proprium quidquam puncto quod mobilis horæ
Permutet dominos, et cedat in altera jura."

But the general scope of an argument may be just, though clumsily stated and fallaciously supported. We are, however, at no loss for experiments on the largest scale whereby to test the theory here noticed. We have English agriculture, subjected to a limited law of entail, contrasted on the one hand with Scottish agriculture, under a law of perpetual entail, and on the other with that of France and its compulsory gavelkind. Mr M'Culloch has taken an elaborate view of the question in its relation to the tillage of the soil in these three countries respectively, more especially in France. We find, from the result of his investigation, that, —

"The average produce per acre of the crops of wheat in England and Wales in good years, has been carefully estimated at thirty-two bushels an acre, and it is certainly not under thirty bushels. But in France the produce of wheat, even in

the richest and best cultivated departments, is little more, according to the official returns and the best private authorities, than twenty bushels an acre; and at an average of the entire kingdom, it hardly amounts in a good year to fourteen bushels. This result is completely decisive. It shows that one acre of land in England yields, from its being better farmed, considerably more wheat than two acres in France: and if we took barley or oats, turnips, beef, or wool for a standard, the difference in our favour would be seen to be still greater... If labour were taken for a standard instead of land, the result would be still more in our favour. One man and one horse in England produce more corn and other agricultural produce than three men and three horses in France. Labour in the latter is misapplied and wasted." – P. 117.

Again: —

"While two husbandmen in France furnish a surplus of food above their own consumption adequate for *one* individual, the same number of English husbandmen furnish a surplus for no fewer than *four* individuals; showing, that, as measured by its capacity of providing for the other classes of the population, English is to French agriculture as four to one." – P. 121.

So much for the comparison of French and English agriculture. Let us now turn to Scotland: —

"In an Appendix to the 'Sketches of the History of Man,' published in 1774, Lord Kames says, 'The quantity of land that is locked up in Scotland by entails has damped the growing spirit of agriculture. There is not produced sufficiency of corn at home for our consumption; and our condition will become worse and worse by new entails, till agriculture and industry be annihilated.' Now the extent of land under entail in Scotland has been certainly more than doubled, perhaps more than trebled, since this paragraph was written, and yet agriculture and manufactures have made a more rapid progress in Scotland in the interval, and especially during the last thirty years, when entails were most prevalent, than in England or in any other country whatever." – P. 71.

Lord Kames, in this respect, seems to have had the same subtle ingenuity in prophesying counter to the event, as distinguishes Mr Cobden.

The first part of Mr M'Culloch's volume contains a cursory historical view of the earliest regulations of succession and inheritance. Thus, at p. 16, he traces the right of primogeniture, or preference of the eldest son, to the Mosaic law. We are far from maintaining that the specific details of the code promulgated on Sinai are a model of law for all nations; on the contrary, they were no doubt intended to be such as a wise human law-giver would frame, and consequently more or less applicable according to the changes and differences of social organisation. But we do hold that these laws indicate to mankind principles which are to be observed in all times and by all nations. Thus, the septennial release of debts, the return of every man to his possession in the year of jubilee, the prohibition of interest upon loans except to an alien, even the poor man's portion in the field and vineyard, may or may not be regulations adapted to a particular existing state of society. But they enunciate a principle of mercy and forbearance towards the poor and unfortunate, of which, we fear, our political economists and commercial legislators are too apt to lose sight. In conformity with this view, when we hear the right of primogeniture assailed as contrary to the law of nature, (by the way, where is this much-talked-of law of nature to be found?) we may safely appeal to the express recognition by the Jewish law of "the right of the first-born as the beginning of his father's strength," to show that the custom of primogeniture is at all events not repugnant to instinctive justice or the common-sense of mankind. The old Saxon law of gavelkind might be better adapted to a superabundance of land and a thin population; the preference of the youngest son, by the custom of

Borough-English, might well prevail among the far progenitors of the Saxon race on the steppes of Scythia,¹ when the elder brothers would be sent forth to roam over the boundless plain with their flocks and herds, the youngest remaining at home to be the prop of his father's old age. But in a settled and cultivated country, and among an advanced people, we maintain succession by primogeniture to be the most consonant, as a matter of theory, to the social feelings and requirements of man; and we think our author has fully established his position as to the beneficial character of its practical results.

In the course of his historical survey, Mr M'Culloch has of course touched on the principle of succession under the Roman law, but more lightly than we should have expected in reference to a system which has entered so largely into our Scottish law, and which is still accepted as a model framework of legal principles in most of the universities of Christendom. And the slight notice taken traces an analogy between the feudal and civil principles of succession, which we think is altogether incorrect. Our author, in speaking of the Roman law of succession, appears to confound in some measure the Roman term *hæres* with the English word *heir*. The civilian definition of *hæres* is *qui ex testamento succedit in universum jus testatoris*. In Scotland the word *heir* has much the same import: – "The law deems it reasonable," says Erskine, (*Inst.* book iii. tit. 8, §. 2) "that every fiar shall have the power by deed, during his life, to declare who shall have the lands after his death: and the person so favoured is called the *heir*." Whereas the feudal notion of the word *heir* preserved in the English law, is of one upon whom the estate is cast, after the death of his ancestor, by act of law and right of blood. In other words, *hæres* is he who is appointed by the will of the deceased to succeed to his civil rights, and, in default of such appointment, the person indicated by a certain general law. But the *heir* (in English law) is the next and worthiest of blood, appointed by the common-law to succeed to his ancestor; although this rule of succession may be set aside by the appointment or will of the ancestor, if possessed of the fee-simple. Bearing in mind this distinction, we shall perceive the cause of Mr M'Culloch's error when he says —

"The Furian, the Voconian, and the Falcidian laws were passed, the first two under the republic, and the latter under Augustus, to secure the interests of children by limiting the power of fathers to make settlements to their prejudice." P. 6.

Now, the Voconian law, so far from protecting the interests of children, frequently operated in the case of daughters to prejudice them; – of this we have a remarkable instance in the case of Annius Asellus, dwelt upon by Cicero, in the second action against Verres, *Orat.* i., c. 41 – 44. The law prevented all registered or assessed (*censi*) citizens of Rome from appointing a female as their *hæres*. Again, the Furian and Falcidian laws were passed to secure the person nominated as *hæres* from being prejudiced by the excessive amount of legacies under the will. Hence, if a man died leaving only daughters, he was prohibited by the Voconian law from appointing any of them as his *hæres*; and the other two laws restrained him from appointing a nominal *hæres*, and leaving his property to his daughters by way of legacies (*legata*.)

In truth, the English notion of heirship, as succession by right of blood, seems to be entirely due to the northern nations and the feudal system. Under both systems, however, it is observable how the progress of legislation and society has been to increase the privileges and diminish the duties of the constituted successor. For as, in tenure by chivalry, the heir was rather the person to whom, in consequence of proximity of blood, the lord might look for the performance of the military services, than the fortunate acquirer of the property, so the Roman *hæres* was regarded more in the light of one on whom devolved the religious, civil, and private duties of the deceased; frequently so burdensome that the inheritance was altogether refused, until the heir was guarded by such laws as the Furian and Falcidian.

¹ We suspect this custom may be traced in the Scythian legends of Herodotus. See his 4th book, chapters v., vi., and x.

While we are in the humour of finding fault, we may notice a passage in which we think Mr M'Culloch has not dealt fairly with the English law. It is as follows: —

"In one respect the law of intestacy appears to stand much in need of revision. It is interpreted so as to give, in many cases, more to the eldest son than the real estate and his share of the personalty. Suppose, for example, that a person dies intestate, leaving an estate worth (say) L.100,000, with a mortgage made by him upon it for half its value, or £50,000, and leaving also £50,000 of personal property, in this case the real estate is obviously worth only £50,000; and consistently with the principles previously laid down, the eldest son should succeed to the estate burdened with its debt, and the personal property be divided among the children generally. But a different rule has been permitted to grow up. The personal property of persons dying intestate is the first fund for their debts, though secured upon their estates; and it is the surplus only, if there be any, after these debts are paid, that is divisible among the children, who, in the above case, would be entitled to nothing. This appears to be in all respects a most objectionable arrangement." — P. 41.

We cannot see any anomaly here. "It is a rule in equity," says Cruise, (*Digest*, tit. xv. c. 4,) "that where a person dies, leaving a variety of funds, one of which must be charged with a debt, that the fund which received the benefit by the contracting the debt shall make satisfaction." This seems to us perfectly just and reasonable, according to the principles of the English law. In the case put by Mr M'Culloch, the personalty of £50,000 obviously owes its existence to the mortgage debt; and it is, therefore, fairly applied to the discharge of that debt. But, *cessante ratione, cessat etiam lex*; this only applies where the deceased was himself the mortgager. Where the lands came to him mortgaged, his personal estate will not be liable, even though he may have made a covenant to pay it. We may refer the legal reader to the judgment of Lord King, delivered, with the assistance of Lord Chief-Justice Raymond and the Master of the Rolls, in *Evelyn v. Evelyn*, 2 P. Wms. 659. Compare *Cope v. Cope*, 1 Salk. 449. *Shafto v. Shafto*, 2 P. Wms. 664.

Although the custom of primogeniture and the law of entail exercise a similar influence on our social state, yet, as they may be said in some measure to go by a different path towards the same end, Mr M'Culloch has treated them separately. With respect to the first, he begins by rebutting Adam Smith's sweeping denunciation: — "Nothing can be more contrary to the real interest of a numerous family, than a right which, in order to enrich one, beggars all the rest of the children." *Wealth of Nations*, p. 171.

"On the contrary," says Mr M'Culloch, "we are well convinced that much of the industry and of the superior wealth and civilisation of modern Europe, may be ascribed to the influence of the custom of primogeniture in determining the succession to estates; and that, were it abolished, or superseded by the opposite custom of equally dividing landed property among all the children, or even among all the sons, they would suffer universally by the change, the youngest as well as the oldest; while it would most seriously compromise the interests of every other class." — P. 28.

The truth is, that the right of primogeniture is rather to be regarded as having for its object the benefit of the community, than the interest of the particular family. If a man has £50,000 a-year and five sons, it may appear, at first sight, decidedly more conducive to "the greatest possible happiness of the greatest possible number," that each of these five sons should have £10,000 a-year, than that one should possess the whole, or bulk, of the paternal property, and the other four be left to buffet their way through the world. But it is for the interest of the nation that its aristocracy should be founded in old families, fortified and graced by historical associations; and these are only to be kept up by a devolution of their lands according to the feudal rule. But, as regards the interest of the

particular family, it will appear on consideration that, in ninety-nine cases out of a hundred, this also is most effectually promoted by the law of primogeniture. By means of this law, the main stock of the family is left in its full strength as a nucleus round which the younger branches are united, and from which their members derive alike a great portion of their status in society, and inducement to advance themselves in their respective pursuits; and, on the other hand, the professions of the country are exalted and dignified by the infusion into their ranks of men of birth and education, who are, at the same time, dependent on those professions for their advancement. Sir Matthew Hale, as quoted by Mr M'Culloch, forcibly describes the results of the opposite system. "This equal division of inheritance," he says, speaking of the old times of Saxon gavelkind, "did by degrees bring the inhabitants to a low kind of country living; and families were broken; and the younger sons which, had they not had these little parcels of land to apply themselves to, would have betaken themselves to trades, or to military, or civil, or ecclesiastical employments, neglecting those opportunities, wholly applied themselves to those small divisions of land; whereby they neglected the opportunities of greater advantage of enriching themselves and the kingdom." And if it should be urged that Sir Matthew Hale could do little more than form an *à priori* judgment of the social condition of England in the days of the Confessor, it should be remembered that the picture here drawn is precisely applicable to the state of France at the present day, and may easily be traced to its similar system of partition. An important public result of the same system, as regards the landholders in the exercise of their functions as citizens, may also be observed in that country. The large body of landed proprietors, amounting to between four and five millions, so far from being the leaders of the people, are, perhaps, the most inert and uninfluential class of the whole community. They pay the bulk of the taxes, and grumble accordingly; but beyond a vague dread of aristocracy – not unnaturally founded, perhaps, on the traditions of the vexatious privileges swept away in 1791 – they seem disposed calmly to acquiesce in all the proclamations, charters, and chimeras that maybe thrust upon them by busier handlers of the tools of government, and behold revolutions concocted in Paris, and bursting over their heads, apparently without the remotest conception that it any wise rests with them to control or guide the convulsion.

"It has sometimes been contended that the custom of primogeniture is injurious, from its interesting the leading families of the country in the support of expensive public establishments, in which their younger branches are most commonly placed." – P. 38.

This objection also Mr M'Culloch brings to the test of experiment, and shows that this bias, if it really exist, is little perceptible, and that the aristocracy have shown much more zeal to discharge the functions of the ill-paid offices of the army and navy, than to get into their hands the lucrative situations connected with the administration of justice. It was certainly not the immediate interest of the aristocracy, for instance, to maintain the offices of the six clerks in Chancery, the profits on which were estimated for compensation at sums varying, we believe, from £2500 to £1000 per annum.

The law of entail is traceable to the same human instincts as the law of primogeniture. The clannish feelings of the northern nations, their notion of representation by blood, and the territorial character of their citizenship, all combined to produce an anxiety to perpetuate the old stocks in the homes of their fathers. Nor is this desire of posthumous control over the transmission of lands the product, as is sometimes alleged, of an artificial state of society. Man's possessory instinct essentially connects itself with the future — *Serit arbores quæ alteri prosint sæculo*. The justice of gratifying this wish by general laws of the community is not more impeachable than that of guarding the indefeasible possession of the owner during his lifetime. It remains to be seen how far the sanction of entails is consistent with the good of the nation in general.

Every lawyer knows that the progress of legal decisions in England has been adverse to entails, and that although the statute *De Donis* continues on the statute-book, yet it was long ago rendered almost nugatory by the introduction of fines and recoveries. Hence the term entail is now popularly

applied to denote the strict settlement of lands, under provisions which prevent them from passing from the heirs to whom they are limited; this having been, of old, the result of an entail properly so called, though it now requires a more complicated mode of settling, and can only endure (so as to render the lands inalienable) for a life or any number of lives in being, and twenty-one years afterwards. This more popular meaning of the word entail is that which Mr M'Culloch follows – his object being to treat of the influence of tying up lands from alienation.

Measuring the practice of entails by the rule of utility, Mr M'Culloch selects two points as the principal topics of discussion.

"In the first place, it is alleged in favour of entails that they stimulate exertion and economy; that they hold out to industry and ambition the strongest and safest excitement in the prospect of founding an imperishable name and a powerful family, and of being remembered and venerated by endless generations as their chief and benefactor. And, in the second place, it is said that entails form the only solid bulwark of a respectable aristocracy, and prevent generations from being ruined by the folly or misfortunes of an individual." – P. 78.

The first of these propositions is, no doubt, partially true; but the motive put forward has not, we think, as a matter of experience, the force that might, at first sight, be attributed to it. Perhaps the keenest accumulators of wealth have not been those who have fixed their capital in a landed estate. The man of business habits and judicious speculation is drawn to make his fortune in obedience to a passion which is partly developed, and at all events fostered, by the pursuit of his life. It cannot be said to arise altogether from a notion of benefiting posterity, of being the founder of a house – the man of whom future Fitztomkynses shall be ashamed – that John Tomkins, merchant, sets at nought all the expostulations of self-indulgence:

"Tun' mare transilias? tibi tortâ cannabe fulto
Cœna sit in transtro? Veientanumque rubellum
Exhalet vapidâ læsum pice fissilis obba?"

Enormous fortunes were accumulated during the declining days of the Roman republic. But entails being then unknown, and the Roman nobility having no territorial position, these fortunes, usually acquired by oppression and extortion in the provinces, were squandered in largesses and corruption at home. There was no other way in which a Roman citizen of great wealth could establish the influence of his family. He could not, like, all English gentleman, connect his name with a landed estate, and extend his influence by those good offices and local duties which lie so immediately open to a man in that capacity. As an almost necessary consequence, he sought for power through the demoralisation and corruption of the holders of the suffrage – causes which contributed more than any other to the downfall of the republic. By lavishing his gold in this manner, he obtained, not only political eminence for himself, but also that power which led to proconsulates and proprætorships among his heirs, and thus gave them the opportunity of repairing, by fresh exactions, his diminished revenues.

Hence we should rather view the law of entail as an inducement to a man to perpetuate his thousands in broad acres than to acquire his fortune in the first instance. And, in conformity with this view, it may be observed, that it is more generally the son or other successor than the architect of the fortune himself who converts the accumulated wealth into this permanent form.

Mr M'Culloch's second point – the preservation of families by means of entails – is one of wider interest and more general importance. In a bustling mercantile community like ours, we cannot too jealously guard any institution which, directly or indirectly, tends to preserve distinctions due to something more than mere wealth. And there can be no doubt that the system of entails has saved

many an ancient line from being thrust from its home of centuries to a strange spot, and this not only among the titled and wealthy, but among the yeomanry and "statesmen." In England, of course, a family may frequently perish through the possession of an estate in fee-simple passing into the hands of an unthrifty representative of the line, as the settlements require constant renewal. But in Scotland the system of perpetual entail exercises a much more potent influence in their behalf. Mr M'Culloch, though he rebuts many of the objections urged against the Scottish law, is nevertheless anxious to see it assimilated in a great measure to that of England. There is, however, an exception which he would make to the rule against perpetuity of entails. It is with regard to the peerage, in which matter we cordially agree with him. There were, in ancient times, instances of barons who were degraded from their dignity on account of their lack of sufficient revenue to support their hereditary title. The independence and the dignity of the House of Lords would be alike maintained by an enactment enabling, or even obliging, all peers to tie up by perpetual entail a certain portion of their estates to accompany the title. Such anomalies as that of an Earl of Buchan (Lord Erskine's father, see Lord Campbell's *Lives of the Chancellors*) living in the uppermost flat of a sixteen-story house, would thereby be avoided with considerable advantage to the national interests.

Mr M'Culloch, therefore, who quotes Sir William Temple and Dr Johnson on the same side, would preserve the law of perpetual entail for the Scottish peerage, and extend it also to that of England. In other respects he is, as we have above stated, in favour of a considerable modification of the Scottish law of entail. He admits, however, the difficulty of dealing with existing entails.

"These have established a right of property not only in the actual possessors and their families, but, speaking generally, in a wide circle of collateral heirs; nor could the rights of the unborn heirs be affected without annulling the clauses in a great number of settlements, and also in marriage-contracts and other deeds *inter vivos*. It is, therefore, hardly possible materially to relax the fetters of entails with strict justice to all parties, though it might perhaps be slowly and gradually effected without inflicting any very serious hardship on any individual. We incline to think that this might be most easily brought about by saving the rights of living heirs of entail, and of such heirs as may be born under existing marriage-contracts. The interests of the possible heirs that might be prejudiced by the adoption of some such rule as this, are of so very unsubstantial a description that they might safely be neglected." P. 78.

At the time we write, a measure is pending before Parliament, entitled "A Bill for the amendment of the Law of Entail in Scotland," and endorsed with the names of the Lord-Advocate, Sir George Grey, and Mr Solicitor-General for Scotland. Whatever difficulties Mr M'Culloch feels with regard to relaxing the fetters of entail, it is obvious that the contrivers of this bill are in nowise hampered by them. They go to work in the most off-hand manner possible. A short and unobtrusive-looking bill is to drive clean through all the existing settlements and deeds of tailzie, with their complicated train of clauses irritant and resolute, as if no mortal was concerned in the matter, and estates were the proper toys of law-makers.

The fact of the quantity of alienable land diminishing in a commercial country, while trade and population are increasing, is no doubt a state of things which calls for a remedy, since there must at some period or another, be a failure of land adequate to meet the requirements of realised fortunes. If, in the judgment of reasonable and practical observers, the difficulty could be met by making all future entails subject to be barred by a process analogous to that existing in England, we should think there could be no hesitation in affirming it to be the most just and most expedient course to introduce such a change, and leave the existing settlements in their contemplated perpetuity. If, however, it can be clearly established that already too much land is locked up in the northern kingdom, and that the soil now free from entail is insufficient to satisfy the requirements of future buyers, then we should

say that the utmost care and skill were required in framing enactments which should adapt themselves to the justice of particular cases, and should, as far as might be, save existing and vested interests in their delicate multiplicity and connexion. If ever such care and skill were required, it would be in a measure which interferes more extensively with vested rights – usually with good reason a sacred thing in the eye of the law – than any which appears in the statute-books of the three kingdoms. A statute to convert the Irish tenants into owners of the fee-simple of their several holdings, (a project which has been talked of,) would scarcely be a more startling invasion of the rights of property as they are usually recognised. We do not, however, intend to impeach the general provisions of the bill. If, as we before observed, so important a change was found to be necessary, it is right to make it; and it is no more than was effected in England by a more gradual process – the subtle fictions of the law-courts, which virtually got rid of the statute *De Donis*. But we can anticipate nothing but uncertainty and multiplied litigation, from the apparently crude and careless project now before us.

An instance of the loose wording of this bill strikes the reader in the very first section. It proposes to enact "that where any estate in Scotland shall be entailed by a deed of tailzie, dated on or after the first day of March one thousand eight hundred and forty-eight, it shall be lawful for any heir of entail, born after the date of such tailzie, being of full age, and in possession of such entailed estate in virtue of such tailzie, *to acquire such estate in fee-simple*, by applying to the Court of Session, &c." Now, what is this estate which the heir of entail is to acquire in fee-simple? The estate-tail, for so it is by hypothesis. But to talk of acquiring an estate-tail in fee-simple is nothing better than downright nonsense. An estate-tail is, by the origin of the word, cut or carved (*taillé*) out of the fee-simple. You may talk of converting or enlarging the part into the whole, but you cannot talk of acquiring the part in the entirety of the whole. This is not all; the bill plunges at once *in medias res*, without favouring us with any sort of definition of the important phrase, "heir of entail," in this and other clauses. The same expression in the statute 1 Jac. VII. c. 32, has already (see *Sandford's Entails*, p. 231) given rise to no small questioning and litigation, which promise to be renewed in abundance should this measure pass into a law. Again, perpetual inalienability is not an incident to all estates-tail. Lands merely bound by what are called the prohibitive clauses, may be alienated for a valuable consideration, though not by a voluntary or (as the Scotch say) gratuitous conveyance. Tailzies, however, to which no clauses are annexed, do not prevent the heir from conveying the lands in any manner he pleases. Now, as, the object of this bill is to relax the bonds of perpetual inalienability, we presume that only those tailzies which are guarded by the irritant and resolute clauses are within its purview. If so, the general expression "deed of tailzie" should have been distinctly limited. If that expression should be held to comprehend all deeds of tailzie, which it must of course do when taken by itself, then the proposed act will exercise a very extensive disabling power, by restricting the unlimited right of alienation under tailzies of simple destination,² and the right of alienation for value under tailzies with prohibitive clauses only introduced, to the peculiar form and instrument pointed out by this bill, and which we suppose was devised in analogy to the forms substituted for fines and recoveries by the statute 3 & 4 Will. IV. c. 74.

We have already seen how Mr M'Culloch would deal with the difficulty of disturbing the devolution of lands already limited in perpetual entail – namely, by "saving the rights of living heirs of entail, and of heirs born under existing marriage-contracts." We think our author has not, in this passage, expressed himself with due legal perspicuity and precision. The phrase "living heirs of entail" is somewhat vague and uncertain; we presume Mr M'Culloch intended the living issue of the heir of entail in possession, and all living heirs-substitute and their living issue. Again, what are existing marriage-contracts? Probably those marriage-contracts are intended, which are annexed to marriages solemnised before the introduction of a new system. Both these suggestions, as we have interpreted them, might with justice, and advantage have formed part of the new law. It is true that this would,

² See Erskine's *Institutes*, B. iii. tit. 8, §§ 21-25.

at all events for a considerable period of time, stop short of that assimilation of the Scottish law to the English which seems to have been a great object with the framers of this bill. But the two systems would gradually correspond; and we hold that there is a principle of justice involved in the upholding of contracts the objects of which are as yet unfulfilled. Where an English settler has limited lands to a man for life, remainder to his first and other sons successively in tail, he knew, at the time of making the settlement, that it was liable to be barred with consent of the eldest son on his coming of age. But it was not so with a Scotch settler who executed a deed of tailzie to several brothers as successive heirs-substitute; and the legislature has no right, without the gravest public cause, to step in and defeat his intention.

But the bill, though intending to give far greater liberty to the owner of an entailed estate than Mr M'Culloch does, or, as we think, is consistent with justice, sets about affording him aid in the most ambiguous and misty manner conceivable. The 2d clause enacts that the heir of entail in possession, born after the date of the act, may disentail in the manner provided by the act; and an heir of entail born before the date of the act may similarly disentail, "with the consent (and not otherwise) of the heir-substitute next in succession, and heir-apparent under the entail of the heir in possession," he being born after the date of the act, and capable of contracting.

We should recommend the tenant in tail to be very cautious how he attempts to "acquire his estate in fee-simple" under the provisions of this clause. He is to obtain the consent of the heir-substitute next in succession. So far his course is clear. But the same person is also designated by the term "heir-apparent under the entail of the heir in possession." Now, is this a qualification of the general term "heir-substitute next in succession," and must such person, under the act, be also heir-apparent? If so, what is the particular qualification required of him under the expression "heir-apparent?" Adhering to the use of the phrase in popular language, we must take, as the only circumstances under which the next heir-substitute and the heir-apparent are one and the same person, the case in which the first estate under the entail is limited to a man and the heirs of his body, and the second to his second son and the heirs of his body; then, supposing the eldest son to die in the lifetime of his father, the second son would be both the next heir-substitute and also the heir-apparent. Is this, therefore, the only case within the act? Scarcely, we should think, was it so intended. Are we, then, to interpret the word heir-apparent in the sense in which the phrase heir-presumptive is generally used; and must we suppose that the cases indicated are those in which there is no issue under the first entail, and therefore the next heir-substitute is what we should call heir-presumptive to the person in possession? If so, what is to become of the numerous cases where there is issue to take under the existing estate-tail? Or can it be that the issue in tail is altogether forgotten by this act, and that the person whose consent is required is merely the next heir-substitute in any case? We are inclined to think this the most probable explanation of this unfortunate clause, but can scarcely imagine that it will be suffered to pass into a law. A further ambiguity, however, arises with respect to this term heir-apparent, from its having a peculiar technical meaning in the Scottish law. "He who is entitled," says Erskine, "to enter heir to a deceased ancestor is, before his actual entry, styled, both in our statutes and by our writers, *apparent heir*." If the bill intends any reference to this legal acceptation of the phrase, we can only understand the person whose consent is required, to be such person as, being next heir-substitute, would, on the immediate decease of the possessor, be his apparent heir, or entitled to enter on the lands. This, again, shuts out all those estates where the possessor has issue in tail, and would, consequently, limit the operation of the bill to exceptional cases. We think we have said enough to convince our readers that this clause is not likely to set free many entailed estates in Scotland – at all events, not without a chaos of litigation, in which the elements of profit will have a tendency to range themselves on the side of the lawyers.

The person whose consent is to be obtained (whoever that mysterious person may be) is, as we have seen, to be born after the date of the act. In conformity with this principle, one would have supposed that where the next heir-substitute shall have been born before that date, then it should be

necessary to obtain the consent of the first person entitled to take *per formam doni*, who shall be born after this date, together with the consent of all those who are to take before him. The third clause, however, introduces a new form of protection to the settlement, and merely enacts that, in such cases, the consent of a certain number of the heirs-substitute is to be obtained, (the blank left for the number was filled up with the word "three" in committee of the House of Commons. Nothing said about the issue in tail, as before.

Where the main enactments of the bill are so incomprehensible, it is useless to dwell on its details. We can only say, that whatever evils may be shown to exist under the present law, they will not only fail to be cured, but must be aggravated tenfold, by such a product of off-hand legislation —

"Sent before its time
Into this breathing world, scarce half made up,
And that so lamely and unfashionable,"

that it must necessarily die of its own deformity, unless the law-courts will lick it into shape by their decisions, — a shape (as it must be) in which its own parents would not know it again.

The law of real property in France exhibits a system so distinctly antagonistic to our English and Scottish law of entail, that we cannot be surprised at the attention with which Mr M'Culloch has investigated its influences.

"According to the law of France, a person with one child may dispose at pleasure of a moiety of his property, the child inheriting the other moiety as legitim, or matter of right; a person having two children can only dispose of a third part of his property; and those having more than two must divide three-fourths of their property equally amongst them, one-fourth part being all that is then left at their disposal. When a father dies intestate, his property is equally divided among his children, without respect to sex or seniority. Nothing can be more distinctly opposed to the principles we have endeavoured to establish, and to the system followed in this country, than this law. It is therefore lucky that it is now no novelty. It has been established for more than half a century, so that we may trace and exhibit its practical influence over the condition of the extensive population subject to its operation. Such an experiment is of rare occurrence, but when made is invaluable. And if its results should confirm the conclusions already come to, it will go far to establish them on an unassailable basis." — P. 80-81.

We have already seen how these results may be traced in the state of French agriculture. They may also, we think, be discerned in the relative position which the landholders of France bear to other classes in the social scale. These, numbering between four and five millions, ought, as a class, to constitute the leaders of the nation. So far from this being the case, they are perhaps the most inert and uninfluential portion of the community, having apparently had little or no voice in the two revolutions which have swept over their heads within the last eighteen years, and as little in the erection, maintenance, or downfall of the Throne of the Barricades. It yet remains to be seen whether they will continue to accept every thing which the clubs of Paris are willing to force upon them. As tax-payers and cultivators of the soil, it can hardly suit them to be propagandists; as men who have something to lose, they will not readily give in to the dictatorial vagaries of Ledru Rollin. If, however, they would hold their own, it is time for them to be up and doing. France has been governed by a minority before now.

We have always regarded it as one of the main advantages of a landed aristocracy, that it raises up a principle of social rank antagonistic to that of mere wealth. In France, the constant subdivision

and transfer of land breaks down this influence, and causes land to be regarded as a mere marketable article and equivalent for money.

"In countries where the custom of primogeniture exercises a powerful influence, families become identified with estates – the family representing the estate, and the estate the family. The wealth and consideration enjoyed by the latter depend upon, and are intimately connected with, the possession of the lands which have descended to them from their ancestors. They estimate their value by another than a mere pecuniary standard. They are attached to them by the oldest and most endearing associations; and they are seldom parted with except under the most painful circumstances. Hence the perpetuity of property in England in the same families, notwithstanding the limited duration of entails; great numbers of estates being at this moment enjoyed by those whose ancestors acquired them at or soon after the Conquest. But in France such feelings are proscribed. Estates and families have there no abiding connexion; and at the demise of an individual who has a number of children, his estate can hardly escape being subdivided. And this effect of the law tends to imbue the proprietors with corresponding sentiments and feelings. 'Non seulement,' says M. De Tocqueville, 'la loi des successions rend difficile aux familles de conserver intacts les mêmes domaines, mais elle leur ôte le désir de le tenter, et elle les entraîne, en quelque sorte, à coopérer avec elle à leur propre ruine.'" – P. 85-86.

But Mr M'Culloch dwells more particularly on the injurious effects to agriculture from the parcelling out of the land into small properties. He shows that a small proprietor is not so efficient a cultivator of the soil as a tenant, in which doctrine Arthur Young had preceded him. He shows, also, that the subdivision of properties leads to the subdivision of farms, and urges that it is impossible to have good farming on small patches of land. Of the miseries of an agricultural system carried on by small farmers on petty holdings, we have already a sufficient example in Ireland. We cannot but think, however, that the progress of things in England has too much swallowed up those little farms of from thirty to fifty acres, which at one time were common over the country. Not but what capital is employed at a great disadvantage on these little holdings – but where there is a general system of good-sized farms, an intermixture, of smaller farms is not attended with injurious effects proportional to those which arise where the whole of the land is split up into minute parcels. And then small farmers furnish a link between the yeomanry and peasantry, which it is useful to maintain, cheering the poor man's lot by pointing out to him a path by which he may advance from the position of a day-labourer to that of an occupier of land. On the same principle, we are rejoiced to observe the gradual extension of the allotment system; although it would have a still more beneficial effect, we think, if the land was granted in the shape of a croft about the cottage, thus giving the tenant a greater interest, and more individual sense of proprietorship, than when his piece of land is packed, along with a number of others, into a mass of unsightly patches.

In connexion with the small holdings in Ireland, it should not be forgotten that this subdivision of the land results mainly from the practice of sub-letting; and this again has arisen in a great degree from the practice of granting long leases, the want of which in England has served, among many other things, for an outcry against the landlords. Mr M'Culloch has pointed out the evils of too long leases on the farming tenant, that they superinduce a sense of security which easily degenerates into indolence. But the influence on Ireland is even worse, by breaking up the land into small patches, on which the occupier can but just maintain himself, paying an exorbitant rent to the middleman. For it is not the eager demand for land amongst the Irish peasantry, as we sometimes hear, that has produced this subdivision of the land, but the subdivision that has produced the demand, by putting the cultivation of the land into the hands of a class who are unable, through want of skill and capital, to

carry it on; who cannot, therefore, furnish employment for the labourers, and thus drive them to grasp at little parcels of land as their only means of securing a wretched subsistence; and this security, as we know, has more than once proved but a fancied one, as in the disastrous failure of the potato crop.

While we are on this subject, we may draw the reader's attention to a very able pamphlet by an Irish gentleman, on Irish matters, which, though we believe it has never been published, has had an extensive private circulation. We allude to "An Address to the Members of the House, of Commons on the Landlord and Tenant Question, by Warren H. R. Jackson, Esq." The work, though somewhat tinged with the hard politico-economical school, is written with great shrewdness of thought and freedom from prejudice, and is well worthy the careful attention of the honourable House. The writer, in discussing the vexed question he has taken in hand, fully coincides with the general principles laid down by Mr M'Culloch. "This," he says, (speaking of the subdivision of land) "is one of the monster grievances of Ireland, and you will do little good unless you abate it." This abatement he would bring about mainly by prospective laws, as by placing all contracts for subletting *hors la loi*, and so taking away from the first lessee all power of recovering his rent from the actual tenant. We cannot but think that this would be found a most salutary enactment. It should be remembered, that the occupier is responsible to the owner of the freehold by the power of distress vested in the latter, and it is but just that he should be relieved from the liability to pay two rents – a liability which it is manifest no good farmer would incur, but which the squalid ravager of the soil in Ireland is always eager for.

It has been said that no further legislative enactment is required in Ireland, and that administrative wisdom must do what yet remains to be done. Mr Jackson, however, shows that there are such deep-seated evils in Ireland as cannot be cured except by the direct interference of the legislature. But we think he expects too much from the Sale of Encumbered Estates Bill. An extensive change of proprietorship would, we are persuaded, be a great evil in Ireland. There is an attachment in general to the "ould stock" among their poorer neighbours, which would naturally be followed by a jealousy and prejudice against the new comers who displaced them. And this prejudice would of itself neutralise any efforts for improvement which the landlord might otherwise be disposed to make – although, in most cases, we should not expect much effort in this direction from a stranger mortgagee, often an unwilling purchaser, who would naturally be anxious to contract with those parties from whom he could obtain his rents with least trouble, leaving them to deal with the land as they liked, and thereby continuing and increasing the odious middleman system.

Mr M'Culloch does not confine his examination of the compulsory partition in France to its influence on agriculture. He has discerned certain political effects of that and the concomitant system of which it is a part, with a precision which subsequent events have elevated into a sort of prophecy. The preface to his work is dated December 1847, and the work was published, we believe, early in January. There can, therefore, be no grounds for classing the following passage with those anticipations which are made after the event: —

"The aristocratical element is no longer to be found in French society; and the compulsory division of the soil, while it prevents the growth of an aristocracy, impresses the same character of mobility upon landed possessions that is impressed on the families of their occupiers. Hence the prevalent want of confidence in the continuance of the present order of things in France. What is there in that country to oppose an effectual resistance to a revolutionary movement? Monarchy in France has been stripped of those old associations and powerful bulwarks whence it derives almost all its lustre and support in this and other countries. The throne stands in solitary, though not unenvied dignity, without the shelter of a single eminence, exposed to the full force of the furious blasts that sweep from every point of the surrounding level. There is nothing intermediate, nothing to hinder a hostile

majority in the Chamber of Deputies from at once subverting the regal branch of the constitution, or changing the reigning dynasty." – P. 132-133.

Scarcely was the printer's ink dry on this passage when the Throne of the Barricades was gone. We have given our author full credit for his sagacity in penetrating into the future, but we think it would puzzle him to foretell what is to come next. We are disposed to doubt, however, whether an aristocracy could have preserved the throne of Louis Philippe. It is true that in our own country William of Nassau and George of Brunswick maintained their crowns by the aid of powerful sections of the nobility. But the revolutions which gave them those crowns were not the volcanic outbursts of popular force. Under such outbursts, no successful usurper, no "Hero-king," no sovereign by the will of the people, has been able to devise a principle which shall establish his throne in security, and serve in the stead of that prestige of old hereditary succession, that grand feudal idea of kingly right, which is the essential fountain of the reverence that guards royalty. Louis Philippe would have confirmed his sovereignty by means of the influence exerted upon interested officials. No sooner was his power shaken in its unstable equilibrium than the men whom his gold had bought rushed to worship the rising sun of the young Republic. Napoleon, before him, would have built up a similar power on military glory: his doom was sealed when his eagles turned from the field of Leipsic. Cromwell employed religious fanaticism to the same end: the fanaticism lasted his time; but we will venture to say that, had he lived, his protectorate would not have reached the seventeen years allotted to the democratic King of the French.

Our author is of opinion that, after all, the system of compulsory partition will fail to guard what has since become the French Republic: —

"But, though it were possible, which it is not, to obviate the mischievous influence of the French and other plans for preventing the increase and continuance of property in the same families, it may be confidently predicted that they will, in time to come as hitherto, wholly fail in their grand object of perpetuating the ascendancy of the democracy. In old settled and fully peopled countries, where the bulk of the population is necessarily poor and dependent, an aristocracy is indispensable for the support of a free system of government – 'Il importe à tous les peuples qui ont la prétention de devenir ou de rester puissants, d'avoir une aristocratie, c'est-à-dire un corps héréditaire ou non, qui conserve et perpetue les traditions, donne de l'esprit de suite à la politique, et se voue à l'art le plus difficile de tous, qu' aujourd'hui cependant tout le monde croit savoir sans l'avoir appris, celui de gouverner. Un peuple sans aristocratic pourra briller dans les lettres et les arts, mais sa gloire politique me semble devoir être passagère comme un météore.' Chevalier, *Lettres sur l'Amerique*, ii. 379," pp. 171, 172.

We have already said that we think England certain to have an aristocracy of some description. The ambition of the people to advance themselves individually in the social scale will necessarily lead to a high value being set upon those advanced positions, and will tend to make them the fulcrum from which the country is governed. And we can conceive nothing more fatal to our national organisation than the result which would follow indirectly from the repeal of these laws. It may be supposed at first sight that no very vital question is involved here. Let those who suppose so, take a view of the probable condition of society which would ensue. These, and other so-called feudalities, being swept away, land becomes a commercial article, according to the desire of the plutocratic reformers. Estates are trucked about in the market like bills of exchange; constantly changing hands, their owners have little connexion with them or the people that live on them, regarding them merely in the light of so much realised capital. The old families gradually become dispossessed; mere wealth is recognised as the sole qualification for rank and influence; and the leading class in the state is composed of men who are an aristocracy by virtue of ready money. Far be it from us to undervalue the enterprise,

integrity, and industry of our merchant manufacturers and tradesmen. But we will say that when we meet with a man, as we often do among those classes, endowed with a broad range of thought and high and noble aims, we regard him as possessing these qualities not as a consequence, but in spite of a commercial training. The immediate effects of such training are to narrow the mind and cramp the soul, not in respect of domestic and social life – for in these, perhaps, the middle classes are unsurpassed by any other – but in the provinces of the statesman and the politician.

In these times, it seems to be commonly supposed that a legislator – like a poet —*nascitur, non fit*. There is a certain kind of training, the acquisition of a certain cast of thought, which are requisites for statesmen as a class, as much as his legal reading for a lawyer, or his apprenticeship for a handicraftsman. Statesmen, however, have to deal with practical matters; and therefore we think, as we have before said, that while the predominance of these requisites in the legislature is essential to good government, there may with advantage at the same time be a certain admixture of the men practically versed in commerce and manufactures. But this should be always a subordinate, not a leading, element in the principles which regulate the administration of government. – We repeat, that the counting-house, the loom, and the anvil, are not the best schools for legislators. For that office, a man requires leisure and education. We shall be told that a "Squire" is not necessarily an educated man. We do not maintain that he is. But, in the first place, as we cannot well have an education-test, we must go to the class in which, as a class, we find the highest and most enlarged form of education; and we believe that this qualification can, without question, be claimed for the leisure-class, or gentlemen of England. In the second place, it should be remembered, that if the squire is not always individually what we should call an educated man, he yet imbibes his thoughts and notions from those who are such, who give tone to the society in which he moves. In investigating the characteristics of classes, it can scarcely be but that a number of exceptions to our general rules will force themselves upon our attention. Yet, in good truth, we believe that almost all the individual examples which can be cited will bear out our estimate. The highest contributions to the legislature, on the part of the middle or commercial classes, have been the shrewd practical men of business, men of the stamp of Mr Hawes. As for the Cobdens and Brights, *et hoc genus omne*, their only motive principle appears to be the interests of *My Shop*. Their notion of loyalty, patriotism, and British prosperity, is nothing but low wages, high profits, and a brisk trade in calicoes.

Many of our readers will recollect a passage in Cicero, (*Off.* i. 42,) in which he reprobates, more or less, all commercial pursuits, in respect of their operations on the moral insight of man, and finishes with the praise of the culture of the soil, in these words: "Omnium rerum ex quibus aliquid acquiritur, nihil est agriculturâ meliùs, nihil uberiùs, nihil dulciùs, nihil homine libero digniùs." In this country we should find it difficult to go along with the feelings of the old Roman republican on these points. But though we have already expressed our high sense of the social and domestic virtues of the middle or trading classes, yet we are most confident in the truth of our position, that the shop is the worst possible preparation for the senate. We know that there is a talk abroad about earnest workers, drones of the hive, and so forth. By all means, let every man work who is fit to work. But it is not necessary, nor is it desirable, that every man should work for gain. On the contrary, we hold that a class endowed with leisure is indispensable, not only for the grace and civilisation, but even for the moral well-being of a community. That money should become the one grand loadstar of thought and action is the bane of those societies where the pursuit of money is the general employment; but where there is such a leisure-class as we have spoken of, forming the topmost rank of a nation otherwise chiefly mercantile, there are numberless influences derived from it which percolate through the underlying masses, and check or modify the exclusive reverence for wealth to which they would otherwise be prone. Even a mere blind respect for rank or title exalts the mind immeasurably as compared with mammon-worship.

While on the subject of our leisure-class, which is pretty nearly synonymous with the landed gentry, we must not pass over in silence a subject in connexion with which the outcry against "the

drones of the hive" is frequently introduced. We refer to the Game-Laws. The whole question of these laws has been so fully discussed in a recent Number of this magazine, that we will not attempt in any way to open that controversy. But they are so commonly coupled with the Laws of Entail as "feudalities," and as interfering with the transmission of land according to "commercial principles," that we could not altogether omit the mention of them. We will at this time only observe, that the denunciation of the Game-Laws is a part of the crusade which Hard-Cash, that arrogant monopolist who bears no brother near his throne, is waging against all other objects of interest or devotion. Let it not be supposed that laws are of minor importance because they relate to the amusements of any portion of the community. They may derive their importance from that circumstance as tending to raise up something which shall cope with the lust of gold. The game-preserving interest is worth maintenance if only as clashing with mammonism.

While the brawlers about "improvement" and "progress," are heaping their meaningless abuse upon feudalities, we should be glad to know what they purpose to do with that greatest feudality of all, the Crown? Already there are symptoms of an intention to take that matter in hand. Mr Cobden and some of his Calibans have talked in the House of Commons about curtailing the "barbarous splendour" of the throne. They know nothing and care nothing about the historical association and constitutional truths embodied in the ancient appendages of royalty. How should they? They want somebody to look after the police, and take care that no one robs their till; that is their idea of government. They want a man (some of them being willing to allow him a small salary, though others think that it does not pay) to preach to the masses, and tell them not to steal, and to be content with their wages; that is their idea of the church. We do not think, however, that the tone of thought prevalent among the Manchester school is destined yet to lead the mind of England. And we are the less inclined to look forward to such a national debasement when we find so enlightened an advocate of free-trade policy as Mr M'Culloch – the advocate of a theory which we hold to be erroneous, but not the selfish and greedy clamourer for the gain of himself and his class – thus coming forward to vindicate the laws which preserve the hereditary character of our aristocracy, which lend so efficient an aid in shielding us from the crushing tread of mammonism, and in preventing "commercial principles" from introducing the ledger and day-book into our manor houses, and the counter into our farmers' parlours. In this view we most heartily thank our author for his noble and energetic contribution to our National Defences at the present time; and as there is a wide field open in connexion with the subject he has so powerfully handled, we cannot take leave of him without expressing a hope that we may before long listen to him again "on the same side."

LIFE IN THE "FAR WEST."

PART II

[The reader is informed that "Life in the Far West" is *no fiction*. The scenes and incidents described are strictly true. The characters are real, (the names being changed in two or three instances only,) and all have been, and are, well known in the Western country.]

"And Mary Brand herself, – what is she like?"

"She's 'some' now; that *is* a fact, and the biggest kind of punkin at that," would have been the answer from any man, woman, or child, in Memphis County, and truly spoken too; always understanding that the pumpkin is *the* fruit to which the *ne-plus-ultra* of female perfection is compared by the figuratively speaking westerns.

Being an American woman, of course she was tall, and straight and slim as a hickory sapling, well formed withal, with rounded bust, and neck white and slender as the swan's. Her features were small, but finely chiselled; and in this, it may be remarked, the lower orders of the American women differ from, and far surpass the same class in England, or elsewhere, where the features, although far prettier, are more vulgar and commonplace. She had the bright blue eye, thin nose, and small but sweetly-formed mouth, the too fair complexion and dark brown hair, which characterise the beauty of the Anglo-American, the heavy masses (hardly curls) which fell over her face and neck contrasting with their polished whiteness. Such was Mary Brand: and to her good looks being added a sweet disposition, and all the good qualities of a thrifty housewife, it must be allowed that she fully justified the eulogiums of the good people of Memphis.

Well, to cut a love-story short, in the which not a little moral courage is shown, young La Bonté fell desperately in love with the pretty Mary, and she with him; and small blame to her, for he was a proper lad of twenty – six feet in his moccasins – the best hunter and rifle-shot in the country, with many other advantages too numerous to mention. But when did the course, &c. e'er run smooth? When the affair had become a recognised "courting," (and Americans alone know the horrors of such prolonged purgatory,) they became, to use La Bonté's words, "awful fond," and consequently about once a-week had their tiffs and makes-up.

However, on one occasion, at a "husking," and during one of these tiffs, Mary, every inch a woman, to gratify some indescribable feeling, brought to her aid jealousy – that old serpent who has caused such mischief in this world; and by a flirtation over the corn-cobs with Big Pete, La Bonté's former and only rival, struck so hard a blow at the latter's heart, that on the moment his brain caught fire, blood danced before his eyes, and he became like one possessed. Pete observed and enjoyed his struggling emotion – better for him had he minded his corn-shelling alone; and the more to annoy his rival, paid the most sedulous attention to the pretty Mary.

Young La Bonté stood it as long as human nature, at boiling heat, could endure; but when Pete, in the exultation of his apparent triumph, crowned his success by encircling the slender waist of the girl with his arm, and snatched a sudden kiss, he jumped upright from his seat, and seizing a small whisky-keg which stood in the centre of the corn-shellers, he hurled it at his rival, and crying to him, hoarse with passion, "to follow if he was a man," he left the house.

At that time, and even now, in the remoter states of the western country, rifles settled even the most trivial differences between the hot-blooded youths; and of such frequent occurrence and invariably bloody termination did they become, that they scarcely produced sufficient excitement to draw together half a dozen spectators of the duel.

In the present case, however, so public was the quarrel, and so well known the parties concerned, that not only the people who had witnessed the affair, but all the neighbourhood thronged to the scene of action, where, in a large field in front of the house, the preliminaries of a duel between Pete and La Bonté were being arranged by their respective friends.

Mary, when she discovered the mischief her thoughtlessness was likely to occasion, was almost beside herself with grief, but she knew how vain it would be to attempt to interfere. The poor girl, who was most ardently attached to La Bonté, was carried, swooning, into the house, where all the women congregated, and were locked in by old Brand, who, himself an old pioneer, thought but little of bloodshed, but refused to let the "women folk" witness the affray.

Preliminaries arranged, the combatants took up their respective positions at either end of a space marked for the purpose, at forty paces from each other. They were both armed with heavy rifles, and had the usual hunting-pouches, containing ammunition, hanging over the shoulder. Standing with the butts of their rifles on the ground, they confronted each other, and the crowd drawing away a few paces only on each side, left one man to give the word. This was the single word "fire;" and after this signal was given, the combatants were at liberty to fire away until one or the other dropped.

At the word both the men quickly raised their rifles to the shoulder, and as the sharp cracks rung instantaneously, they were seen to flinch, as either felt the pinging sensation of a bullet entering his flesh. Regarding each other steadily for a few moments, the blood running down La Bonté's neck from a wound under the left jaw, whilst his opponent was seen to place his hand once to his right breast, as if to feel the position of his wound, they commenced reloading their rifles. As, however, Pete was in the act of forcing down the ball with his long hickory wiping-stick, he suddenly dropped his right arm, – the rifle slipped from his grasp, – and, reeling for a moment like a drunken man, – he fell dead to the ground.

Even here, however, there was law of some kind or another, and the consequences of the duel were, that the constables were soon on the trail of La Bonté to arrest him. He, however, easily avoided them, and taking to the woods, lived for several days in as wild a state as the beasts he hunted and killed for his support.

Tired of this, however, he resolved to quit the country, and betake himself to the mountains, for which life he had ever felt an inclination.

When, therefore, he thought the officers of justice had tired of seeking him, and the coast was comparatively clear, he determined to start on his distant expedition to the Far West.

Once more, before he carried his project into execution, he sought and had a last interview with Mary Brand.

"Mary," said he, "I'm about to break. They're hunting me like a fall buck, and I'm bound to quit. Don't think any more about me, for I shall never come back." Poor Mary burst into tears, and bent her head on the table near which she was sitting. When again she raised it, she saw La Bonté, with his long rifle on his shoulder, striding with rapid steps from the house; and year after year rolled on, and he never returned.

A few days after this he found himself at St Louis, the emporium of the fur trade, and the fast rising metropolis of the precocious settlements of the west. Here, a prey to the agony of mind which jealousy, remorse, and blighted love mix into a very puchero of misery, La Bonté got into the company of certain "rowdies," a class which every western city particularly abounds in; and anxious to drown his sorrows in any way, and quite unscrupulous as to the means, he plunged into all the vicious excitements of drinking, gambling, and fighting, which form the every-day amusements of the rising generation of St Louis.

Perhaps in no other part of the United States, where indeed humanity is frequently to be seen in many curious and unusual phases, is there a population so marked in its general character, and at the same time divided into such distinct classes, as in the above-named city. Dating, as it does, its foundation from yesterday, – for what are thirty years in the growth of a metropolis? – its founders are

now scarcely passed middle life, regarding with astonishment the growing works of their hands; and whilst gazing upon its busy quays, piled with grain and other produce of the west, its fleets of huge steamboats lying tier upon tier alongside the wharves, its well-stored warehouses and all the bustling concomitants of a great commercial depot, they can scarcely realise the memory of a few short years, when on the same spot nothing was to be seen but the few miserable hovels of a French village – the only sign of commerce the unwieldy bateaux of the Indian traders, laden with peltries from the distant regions of the Platte and Upper Missouri. Where now intelligent and wealthy merchants walk erect, in conscious substantiality of purse and credit, and direct the commerce of a vast and numerous-populated region, but the other day stalked, in dress of buckskin, the Indian trader of the west; and all the evidences of life, mayhap, consisted of the eccentric vagaries of the different bands of trappers and hardy mountaineers, who accompanied, some for pleasure and some as escort, the periodically arriving bateaux, laden with the beaver skins and buffalo robes collected during the season at the different trading posts in the Far West.

These, nevertheless, were the men whose hardy enterprise opened to commerce and the plough the vast and fertile regions of the West. Rough and savage though they were, they alone were the pioneers of that extraordinary tide of civilisation which has poured its resistless current through tracts large enough for kings to govern; over a country now teeming with cultivation, where, a few short years ago, countless herds of buffalo roamed unmolested, the bear and deer abounded, and where the savage Indian skulked through the woods and prairies, lord of the unappreciated soil which now yields its prolific treasures to the spade and plough of civilised man. To the wild and half-savage trapper, who may be said to exhibit the energy, enterprise, and hardihood characteristic of the American people, divested of all the false and vicious glare with which a high state of civilisation, too rapidly attained, has obscured their real and genuine character, in which the above traits are eminently prominent – to these men alone is due the empire of the West – destined in a few short years to become the most important of those confederate states which compose the mighty union of North America.

Sprung, then, out of the wild and adventurous fur trade, St Louis, still the emporium of that species of commerce, preserves even now, in the character of its population, many of the marked peculiarities which distinguished its early founders, who were identified with the primitive Indian in hardiness and instinctive wisdom. Whilst the French portion of the population retain the thoughtless levity and frivolous disposition of their original source, the Americans of St Louis, who may lay claim to be native, as it were, are as particularly distinguished for determination and energy of character as they are for physical strength and animal courage; and are remarkable, at the same time, for a singular aptitude in carrying out commercial enterprises to successful terminations, which would appear to be incompatible with the love of adventure and excitement which forms so prominent a feature in their character. In St Louis, nevertheless, and from her merchants, have emanated many commercial enterprises of gigantic speculation, not confined to its own locality or the distant Indian fur trade, but embracing all parts of the continent, and even a portion of the Old World. And here it must be remembered that St Louis is situated inland, at a distance of upwards of one thousand miles from the sea, and three thousand from the capital of the United States.

Besides her merchants and upper class, who form a little aristocracy even here, she has a large portion of her population still connected with the Indian and fur trade, who preserve all their characteristics unacted upon by the influence of advancing civilisation, and between whom and other classes there is a marked distinction. There is, moreover, a large floating population of foreigners of all nations, who must possess no little amount of enterprise to be tempted to this spot, from whence they spread over the remote western tracts, still invested by the savage; and, therefore, if any of their blood is infused into the native population, the characteristic energy and enterprise is increased, and not tempered down, by the foreign cross.

But perhaps the most singular of her casual population are the mountaineers, who, after several seasons spent in trapping, and with good store of dollars, arrive from the scene of their adventures,

wild as savages, determined to enjoy themselves, for a time, in all the gaiety and dissipation of the western city. In one of the back streets of the town is a tavern well known as the "Rocky Mountain House," and here the trappers resort, drinking and fighting as long as their money lasts, which, as they are generous and lavish as Jack Tars, is for a few days only. Such scenes as are enacted in the Rocky Mountain House, both tragical and comical, are beyond the powers of pen to describe; and when a fandango is in progress, to which congregate the coquettish belles from "Vide Poche," as the French portion of a suburb is nicknamed, – the grotesque endeavours of the bear-like mountaineers to sport a figure on the light fantastic toe, and their insertions into the dance of the mystic jumps of Terpsichorean Indians when engaged in the "medicine" dances in honour of bear, of buffalo, or ravished scalp, – are such startling innovations on the choreographic art as would cause the shade of Gallini to quake and gibber in his pumps.

Passing the open doors and windows of the Mountain House, the stranger stops short as the sounds of violin and banjo twang upon his ears, accompanied by extraordinary noises – which sound unearthly to the greenhorn listener, but which the initiated recognise as an Indian song roared out of the stentorian lungs, of a mountaineer, who, patting his stomach with open hands, to improve the necessary shake, choruses the well-known Indian chant: —

Hi – Hi – Hi – Hi,
Hi-i – Hi-i – Hi-i – Hi-i
Hi-ya – hi-ya – hi-ya – hi-ya
Hi-ya – hi-ya – hi-ya – hi-ya
Hi-ya – hi-ya – hi – hi,
&c. &c. &c.

and polishing off the high notes with a whoop which makes the old wooden houses shake again, as it rattles and echoes down the street.

Here, over fiery "monaghahela," Jean Batiste, the sallow half-breed voyageur from the north – and who, deserting the service of the "North-West," (the Hudson's Bay Company,) has come down the Mississippi, from the "Falls," to try the sweets and liberty of "free" trapping – hobnobs with a stalwart leather-clad "boy," just returned from trapping on the waters of Grand River, on the western side the mountains, who interlards his mountain jargon with Spanish words picked up in Taos and California. In one corner a trapper, lean and gaunt from the starving regions of the Yellow Stone, has just recognised an old companyero, with whom he hunted years before in the perilous country of the Blackfeet.

"Why, John, old hos, how do you come on?"

"What! Meek, old 'coon! I thought you were under?"

One from Arkansa stalks into the centre of the room, with a pack of cards in his hand, and a handful of dollars in his hat. Squatting cross-legged on a buffalo robe, he smacks down the money, and cries out – "Ho, boys, hyar's a deck, and hyar's the beaver, (rattling the coin,) who dar set his hos? Wagh!"

Tough are the yarns of wondrous hunts and Indian perils, of hairbreadth 'scapes and curious "fixes." Transcendant are the qualities of sundry rifles, which call these hunters masters; "plum" is the "centre" each vaunted barrel shoots; sufficing for a hundred wigs is the "hair" each hunter has "lifted" from Indians' scalps; multitudinous the "coups" he has "struck." As they drink so do they brag, first of their guns, their horses, and their squaws, and lastly of themselves: – and when it comes to that, "ware steel."

La Bonté, on his arrival at St. Louis, found himself one day in no less a place than this; and here he made acquaintance with an old trapper about to start for the mountains in a few days, to hunt on the head waters of Platte and Green River. With this man he resolved to start, and, having still some

hundred dollars in cash, he immediately set about equipping himself for the expedition. To effect this, he first of all visited the gun-store of Hawken, whose rifles are renowned in the mountains, and exchanged his own piece, which was of very small bore, for a regular mountain rifle. This was of very heavy metal, carrying about thirty-two balls to the pound, stocked to the muzzle and mounted with brass, its only ornament being a buffalo bull, looking exceedingly ferocious, which was not very artistically engraved upon the trap in the stock. Here, too, he laid in a few pounds of powder and lead, and all the necessaries for a long hunt.

His next visit was to a smith's store, which smith was black by trade and black by nature, for he was a nigger, and, moreover, celebrated as being the best maker of beaver-traps in St Louis, and of whom he purchased six new traps, paying for the same twenty dollars – procuring, at the same time, an old trap-sack, made of stout buffalo skin, in which to carry them.

We next find La Bonté and his companion – one Luke, better known as Grey-Eye, one of his eyes having been "gouged" in a mountain fray – at Independence, a little town situated on the Missouri, several hundred miles above St Louis, and within a short distance of the Indian frontier.

Independence may be termed the "prairie port" of the western country. Here the caravans destined for Santa Fé and the interior of Mexico, assemble to complete their necessary equipment. Mules and oxen are purchased, teamsters hired, and all stores and outfit laid in here for the long journey over the wide expanse of prairie ocean. Here, too, the Indian traders and the Rocky Mountain trappers rendezvous, collecting in sufficient force to ensure their safe passage through the Indian country. At the seasons of departure and arrival of these bands, the little town presents a lively scene of bustle and confusion. The wild and dissipated mountaineers get rid of their last dollars in furious orgies, treating all comers to galore of drink, and pledging each other, in horns of potent whisky, to successful hunts and "heaps of beaver." When every cent has disappeared from their pouches, the free trapper often makes away with rifle, traps, and animals, to gratify his "dry," (for your mountaineer is never "thirsty;") and then, "hos and beaver" gone, is necessitated to hire himself to one of the leaders of big bands, and hypothecate his services for an equipment of traps and animals. Thus La Bonté picked up three excellent mules for a mere song, with their accompanying pack saddles, *apishamores*,³ and lariats, and the next day, with Luke, "put out" for Platte.

As they passed through the rendezvous, which was encamped on a little stream beyond the town, even our young Mississippian was struck with the novelty of the scene. Upwards of forty huge waggons, of Connestoga and Pittsburg build, and covered with snow-white tilts, were ranged in a semicircle, or rather a horse-shoe form, on the flat open prairie, their long "tongues" (poles) pointing outwards; with the necessary harness for four pairs of mules, or eight yoke of oxen, lying on the ground beside them, spread in ready order for "hitching up." Round the waggons groups of teamsters, tall stalwart young Missourians, were engaged in busy preparation for the start, greasing the wheels, fitting or repairing harness, smoothing ox-bows, or overhauling their own moderate kits or "possibles." They were all dressed in the same fashion: a pair of "homespun" pantaloons, tucked into thick boots reaching nearly to the knee, and confined round the waist by a broad leathern belt, which supported a strong butcher knife in a sheath. A coarse checked shirt was their only other covering, with a fur cap on the head.

Numerous camp-fires surrounded the waggons, and by them lounged wild-looking mountaineers, easily distinguished from the "greenhorn" teamsters by their dresses of buckskin, and their weather-beaten faces. Without an exception, these were under the influence of the rosy god; and one, who sat, the picture of misery, at a fire by himself – staring into the blaze with vacant countenance, his long matted hair hanging in unkempt masses over his face, begrimed with the dirt of a week, and pallid with the effects of ardent drink – was suffering from the usual consequences of

³ Saddle-blanket made of buffalo-calf skin.

having "kept it up" beyond the usual point, and now was paying the penalty in a fit of "horrors" – as *delirium tremens* is most aptly termed by sailors and the unprofessional.

In another part, the merchants of the caravan and Indian traders were superintending the lading of the waggon, or mule packs. These were dressed in civilised attire, and some bedizened in St Louis or Eastern City dandyism, to the infinite disgust of the mountain men, who look upon a bourgeois (bourgeois) with most undisguised contempt, despising the very simplest forms of civilisation. The picturesque appearance of the encampment was not a little heightened by the addition of several Indians from the neighbouring Shawnee settlement, who, mounted on their small active horses, on which they reclined, rather than sat, in negligent attitudes, quietly looked on at the novel scene, indifferent to the "chaff" which the thoughtless teamsters indulged in at their expense. Numbers of mules and horses were picketed at hand, while a large herd of noble oxen were being driven towards the camp – the wo-ha of the teamsters sounding far and near, as they collected the scattered beasts in order to yoke up.

As most of the mountain men were utterly unable to move from camp, Luke and La Bonté, with three or four of the most sober, started in company, intending to wait on "Blue," a stream which runs into the Caw or Kansas River, until the "balance" of the band came up. Mounting their mules, and leading the loose animals, they struck at once into the park-like prairie, and were out of sight of civilisation in an instant.

It was the latter end of May, towards the close of the season of heavy rains, which in early spring render the climate of this country almost intolerable, at the same time that they serve to fertilise and thaw the soil, so long bound up by the winter's frosts. The grass was every where luxuriously green, and gaudy flowers dotted the surface of the prairie. This term, however, should hardly be applied to the beautiful undulating scenery of this park-like country. Unlike the flat monotony of the Grand Plains, here well wooded uplands clothed with forest trees of every species, and picturesque dells through which run clear and bubbling streams belted with gay-blossomed shrubs, every where present themselves; whilst on the level meadowland, topes of trees with spreading foliage afforded a shelter to the game and cattle, and well-timbered knolls rise at intervals from the plain.

Many clear streams dashing over their pebbly beds intersect the country, from which, in the noonday's heat, the red-deer jump, shaking their wet sides, as the noise of approaching man disturbs them; and booming grouse rise from the tall luxuriant herbage at every step. Where the deep escarpments of the river banks exhibit the section of the earth, a rich alluvial soil of surprising depth appears to court the cultivation of civilised man; and in every feature it is evident that here nature has worked with kindest and most bountiful hand.

For hundreds of miles along the western or right bank of the Missouri does such a country as this extend, to which, for fertility and natural resources, no part of Europe can offer even feeble comparison. Sufficiently large to contain an enormous population, it has, besides, every advantage of position, and all the natural capabilities which should make it the happy abode of civilised man. Through this unpeopled country the United States pours her greedy thousands, to seize upon the barren territories of her feeble neighbour.

Camping the first night on "Black Jack," our mountaineers here cut each man a spare hickory wiping-stick for his rifle, and La Bonté, who was the only greenhorn of the party, witnessed a savage ebullition of rage on the part of one of his companions, exhibiting the perfect unrestraint which these men impose upon their passions, and the barbarous anger which the slightest opposition to the will excites. One of the trappers, on arriving at the camping-place, dismounted from his horse, and, after divesting it of the saddle, endeavoured to lead his mule by the rope up to the spot where he wished to deposit his pack. Mule-like, however, the more he pulled the more stubbornly she remained in her tracks, planting her fore-legs firmly, and stretching out her neck with provoking obstinacy. If truth be told, it does require the temper of a thousand Jobs to manage a mule; and in no case does the wilful mulishness of the animal stir up one's choler more than in the very trick which this one was

playing, and which is a daily occurrence. After tugging ineffectually for several minutes, winding the rope round his body, and throwing himself forward and suddenly with all his strength, the trapper actually foamed with passion; and although he might have subdued the animal at once by fastening the rope with a half-hitch round its nose, with an obstinacy equal to that of the mule itself he refused to attempt it, preferring to vanquish her by main strength. However, this failed, and with a volley of blasphemous imprecations the mountaineer suddenly seized his rifle, and, levelling it at the mule's head, shot her dead.

Passing the Wa-ka-rasha, a well-timbered stream, they met a band of Osages going "to buffalo." These Indians, in common with some tribes of the Pawnees, shave the head, with the exception of a ridge from the forehead to the centre of the scalp, which is "roached" or hogged like the mane of a mule, and stands erect, plastered with unguents, and ornamented by feathers of the hawk and turkey. The naked scalp is often painted in mosaic with black and red, the face with shining vermilion. They were all naked to the breech-clout, the warmth of the sun having caused them to throw their dirty blankets from their shoulders. These Indians not unfrequently levy contributions on strangers whom they may accidentally meet; but they easily distinguish the determined mountaineer from the incautious greenhorn, and think it better to let the former alone.

Crossing Vermilion, they arrived on the fifth day at "Blue," where they encamped in the broad timber which belts the creek, and there awaited the arrival of the remainder of the party.

It was two days before they came up; but the day after, fourteen in number, they started for the mountains, striking a trail which follows the "Big Blue" in its course through the prairies, which, as they advance to the westward, are gradually smoothing away into a vast unbroken expanse of rolling plain. Herds of antelope began to show themselves, and some of the hunters, leaving the trail, soon returned with plenty of their tender meat. The luxuriant but coarse grass they had hitherto seen now changed into the nutritious and curly buffalo grass, and their animals soon improved in appearance on the excellent pasture. In a few days, without any adventure, they struck the Platte River, its shallow waters (from which it derives its name) spreading over a wide and sandy bed, numerous sand bars obstructing the sluggish current, and with nowhere sufficient water to wet the forder's knee.

By this time, but few antelope having been seen, the party became entirely out of meat; and, one whole day and part of another having passed without so much as a sage rabbit having presented itself, not a few objurgations on the buffalo grumbled from the lips of the hunters, who expected ere this to have reached the land of plenty. La Bonté killed a fine deer, however, in the river bottom, after they had encamped, not one particle of which remained after supper that night, but which hardly took the rough edge off their keen appetites. Although already in the buffalo range, no traces of these animals had yet been seen; and as the country afforded but little game, and the party did not care to halt and lose time in hunting for it, they moved along hungry and sulky, the theme of conversation being the well remembered merits of good buffalo meat, – of "fat fleece," "hump rib," and "tender loin;" of delicious "boudins," and marrow bones too good to think of. La Bonté had never seen the lordly animal, and consequently but half believed the accounts of the mountaineers, who described their countless bands as covering the prairie far as the eye could reach, and requiring days of travel to pass through; but the visions of such dainty and abundant feeding as they descanted on set his mouth watering, and danced before his eyes as he slept supperless, night after night, on the banks of the hungry Platte.

One morning he had packed his animals before the rest, and was riding a mile in advance of the party, when he saw on one side the trail, looming in the refracted glare which mirages the plains, three large dark objects without shape or form, which rose and fell in the exaggerated light like ships at sea. Doubting what it could be, he approached the strange objects; and as the refraction disappeared before him, the dark masses assumed a more distinct form, and clearly moved with life. A little nearer, and he made them out – they were buffalo. Thinking to distinguish himself, the greenhorn dismounted from his mule, and quickly hobbled her, throwing his lasso on the ground to trail behind

when he wished to catch her. Then, rifle in hand, he approached the huge animals, and, being a good hunter, knew well to take advantage of the inequalities of the ground and face the wind; by which means he crawled at length to within forty yards of the buffalo, who were quietly cropping the grass, unconscious of danger. Now, for the first time, he gazed upon the noble beast of which he had so often heard, and longed to see. With coal-black beard sweeping the ground as he fed, an enormous bull was in advance of the others, his wild brilliant eyes peering from an immense mass of shaggy hair, which covered his neck and shoulder. From this point his skin was bare as one's hand, a sleek and shining dun, and his ribs well covered with shaking flesh. As he leisurely cropped the short curly grass he occasionally lifted his tail into the air, and stamped his foot as a fly or mosquito annoyed him – flapping the intruder with his tail, or snatching at the itching part with his ponderous head.

When La Bonté had sufficiently admired the animal, he lifted his rifle, and, taking steady aim, and certain of his mark, pulled the trigger, expecting to see the huge beast fall over at the report. What was his surprise and consternation, however, to see the animal flinch as the ball struck him, but gallop off, followed by the others, and apparently unhurt. As is generally the case with greenhorns, he had fired too high, not understanding that the only certain spot to strike a buffalo is but a few inches above the brisket, and that above this a shot is rarely fatal. When he rose from the ground, he saw all the party halting in full view of his discomfiture; and when he joined them, loud were the laughs, and deep the regrets of the hungry at his first attempt.

However, they now knew that they were in the country of meat; and a few miles farther, another band of stragglers presenting themselves, three of the hunters went in pursuit, La Bonté taking a mule to pack in the meat. He soon saw them crawling towards the band, and shortly two puffs of smoke, and the sharp cracks of their rifles showed that they had got within shot; and when he had ridden up, two fine buffaloes were stretched upon the ground. Now, for the first time, he was initiated into the mysteries of "butchering," and watched the hunters as they turned the carcass on the belly, stretching out the legs to support it on each side. A transverse cut was then made at the nape of the neck, and, gathering the long hair of the boss in one hand, the skin was separated from the shoulder. It was then laid open from this point to the tail, along the spine, and the skin was freed from the sides and pulled down to the brisket, but, still attached to it, was stretched upon the ground to receive the dissected portions. Then the shoulder was severed, the fleece removed from along the backbone, and the hump-ribs cut off with a tomahawk. All this was placed upon the skin; and after the "boudins" had been withdrawn from the stomach, and the tongue – a great dainty – taken from the head, the meat was packed upon the mule, and the whole party hurried to camp rejoicing.

There was merry-making in the camp that night, and the way they indulged their appetites – or, in their own language, "throw'd" the meat "cold" – would have made the heart of a dyspeptic leap for joy or burst with envy. Far into the "still watches of the tranquil night" the fat-clad "depouille" saw its fleshy mass grow small by degrees and beautifully less, before the trenchant blades of the hungry mountaineers; appetising yards of well-browned "boudin" slipped glibly down their throats; rib after rib of tender hump was picked and flung to the wolves; and when human nature, with helpless gratitude, and confident that nothing of superexcellent comestibility remained, was lazily wiping the greasy knife that had done such good service, – a skilful hunter was seen to chuckle to himself as he raked the deep ashes of the fire, and drew therefrom a pair of tongues so admirably baked, so soft, so sweet, and of such exquisite flavour, that a veil is considerably drawn over the effects their discussion produced in the mind of our greenhorn La Bonté, and the raptures they excited in the bosom of that, as yet, most ignorant mountaineer. Still, as he ate he wondered, and wondering admired, that nature, in giving him such profound gastronomic powers, and such transcendent capabilities of digestion, had yet bountifully provided an edible so peculiarly adapted to his ostrich-like appetite, that after consuming nearly his own weight in rich and fat buffalo meat, he felt as easy and as incommoded as if he had been lightly supping on strawberries and cream.

Sweet was the digestive pipe after such a feast, and soft the sleep and deep, which sealed the eyes of the contented trappers that night. It felt like the old thing, they said, to be once more amongst the "meat;" and, as they were drawing near the dangerous portion of the trail, they felt at home; although not a night now passed but, when they lay down on their buffalo robes to sleep, they could not be confident that that sleep was not their last – knowing full well that savage men were hovering near, thirsting for their lives.

However, no enemies showed themselves as yet, and they proceeded quietly up the river, vast herds of buffaloes darkening the plains around them, affording them more than abundance of the choicest meat; but, to their credit be it spoken, no more was killed than absolutely required, – unlike the cruel slaughter made by most of the white travellers across the plains, who wantonly destroy these noble animals, not even for the excitement of sport, but in cold-blooded and insane butchery. La Bonté had practice enough to perfect him in the art, and, before the buffalo range was passed, he was ranked as a first-rate hunter. One evening he had left the camp for meat, and was approaching a band of cows for that purpose, crawling towards them along the bed of a dry hollow in the prairie, when he observed them suddenly jump away towards him, and immediately after a score of mounted Indians appeared in sight, whom, by their dress, he at once knew to be Pawnees and enemies. Thinking they might not discover him, he crouched down in the ravine; but a noise behind causing him to turn his head, he saw some five or six advancing up the bed of the dry creek, whilst several more were riding on the bluffs. The cunning savages had cut off his retreat to his mule, which he saw in the possession of one of the Indians. His presence of mind, however, did not desert him; and seeing at once that to remain where he was would be like being caught in a trap, (as the Indians could advance to the edge of the bluff and shoot him from above,) he made for the open prairie, determined at least to sell his scalp dearly, and make "a good fight." With a yell the Indians charged, but halted when they saw the sturdy trapper deliberately kneel, and, resting his rifle on the wiping-stick, take a steady aim as they advanced. Full well the Pawnees know, to their cost, that a mountaineer seldom pulls his trigger without sending a bullet to the mark; and, certain that one at least must fall, they hesitated to make the onslaught. Steadily the white retreated with his face to the foe, bringing the rifle to his shoulder the instant that one advanced within shot, the Indians galloping round, firing the few guns they had amongst them at long distances, but without effect. One young "brave," more daring than the rest, rode out of the crowd, and dashed at the hunter, throwing himself, as he passed within a few yards, from the saddle, and hanging over the opposite side of his horse, – presenting no other mark than his left foot, – discharged his bow from under the animal's neck, and with such good aim, that the arrow, whizzing through the air, struck the stock of La Bonté's rifle, which was at his shoulder, and, glancing off, pierced his arm, inflicting, luckily, but a slight wound. Again the Indian turned in his course, the others encouraging him with loud war-whoops, and once more passing at still less distance, drew his arrow to the head. This time, however, the eagle eye of the white caught sight of the action, and suddenly rising from his knee as the Indian was approaching, hanging by his foot alone over the opposite side of the horse, he jumped towards the animal with outstretched arms and a loud yell, causing it to start so suddenly, and swerve from its course, that the Indian lost his foothold, and, after in vain struggling to regain his position, fell to the ground, but instantly rose upon his feet and gallantly confronted the mountaineer, striking his hand upon his brawny chest and shouting a loud whoop of defiance. In another instant the rifle of La Bonté had poured forth its contents; and the brave Indian, springing into the air, fell dead to the ground, just as the other trappers, who had heard the firing, galloped up to the spot, at sight of whom the Pawnees, with yells of disappointed vengeance, hastily retreated.

That night La Bonté first lifted hair!

A few days after they reached the point where the Platte divides into two great forks: – the northern one, stretching to the north-west, skirts the eastern base of the Black Hills, and sweeping round to the south rises in the vicinity of the mountain valley called the New Park, receiving the

Laramie, Medicine Bow, and Sweet-Water creeks. The other, or "South Fork," strikes towards the mountains in a south-westerly direction, hugging the base of the main chain of the Rocky Mountains, and, fed by several small creeks, rises in the uplands of the Bayou Salado, near which is also the source of the Arkansa. To the forks of the Platte the valley of that river extends from three to five miles on each side, being enclosed by steep sandy bluffs, from the summits of which the prairies stretch away in broad undulating expanse to the north and south. The "bottom," as it is termed, is but thinly covered with timber, the cotton-woods being scattered only here and there; but some of the islands in the broad bed of the stream are well wooded, which leads to the inference that the trees on the banks have been felled by Indians who formerly frequented this river as a chosen hunting-ground. As during the long winters the pasture in the vicinity is scarce and withered, the Indians feed their horses on the bark of the sweet cotton-wood, upon which they subsist, and even fatten. Thus, wherever a village has been encamped, the trunks of these trees strew the ground, with their upper limbs and smaller branches peeled of their bark, and looking as white and smooth as if scraped with a knife.

On the forks, however, the timber is heavier and of greater variety, some of the creeks being well wooded with ash and cherry, which break the monotony of the everlasting cotton-wood.

Dense masses of buffalo still continued to darken the plains, and numerous bands of wolves hovered round the outskirts of the vast herds, singling out the sick and wounded animals, and preying upon the calves whom the rifles and arrows of the hunters had bereaved of their mothers. The white wolf is the invariable attendant upon the buffalo; and when one of these persevering animals is seen, it is certain sign that buffalo are not far distant. Besides the buffalo wolf, there are four distinct varieties common to the plains, and all more or less attendant upon the buffalo. These are the black, the gray, the brown, and last and least the *coyote*, or *cayeute* of the mountaineers, the "*wach-unkamănet*," or "medicine wolf" of the Indians, who hold the latter animal in reverential awe. This little wolf, whose fur is of great thickness and beauty, although of diminutive size, is wonderfully sagacious, and makes up by cunning what it wants in physical strength. In bands of from three to thirty they will not unfrequently station themselves along the "runs" of the deer and the antelope, extending their line for many miles, – and the quarry being started, each wolf will follow in pursuit until tired, when it relinquishes the chase to another relay, following slowly after until the animal is fairly run down, when all hurry to the spot and speedily consume the carcass. The cayeute, however, is often made a tool of by his larger brethren, unless, indeed, he acts from motives of spontaneous charity. When a hunter has slaughtered game, and is in the act of butchering it, these little wolves sit patiently at a short distance from the scene of operations, while at a more respectful one the larger wolves (the white or gray) lope hungrily around, licking their chops in hungry expectation. Not unfrequently the hunter throws a piece of meat towards the smaller one, who seizes it immediately, and runs off with the morsel in his mouth. Before he gets many yards with his prize, the large wolf pounces with a growl upon him, and the cayeute, dropping the meat, returns to his former position, and will continue his act as long as the hunter pleases to supply him.

Wolves are so common on the plains and in the mountains, that the hunter never cares to throw away a charge of ammunition upon them, although the ravenous animals are a constant source of annoyance to him, creeping to the camp-fire at night, and gnawing his saddles and *apishamores*, eating the skin ropes which secure the horses and mules to their pickets, and even their very hobbles, and not unfrequently killing or entirely disabling the animals themselves.

Round the camp, during the night, the cayeute keeps unremitting watch, and the traveller not unfrequently starts from his bed with affright, as the mournful and unearthly chiding of the wolf breaks suddenly upon his ear: the long-drawn howl being taken up by others of the band, until it dies away in the distance, as some straggler passing within hearing answers to the note, and howls as he lopes away.

Our party crossed the south fork about ten miles from its juncture with the main stream, and then, passing the prairie, struck the north fork a day's travel from the other. At the mouth of

an ash-timbered creek they came upon Indian "sign," and, as now they were in the vicinity of the treacherous Sioux, they moved along with additional caution, Frapp and Gonneville, two experienced mountaineers, always heading the advance.

About noon they had crossed over to the left bank of the fork, intending to camp on a large creek where some fresh beaver "sign" had attracted the attention of some of the trappers; and as, on further examination, it appeared that two or three lodges of that animal were not far distant, it was determined to remain here a day or two, and set their traps.

Gonneville, old Luke, and La Bonté, had started up the creek, and were carefully examining the banks for "sign," when the former, who was in front, suddenly paused, and looking intently up the stream, held up his hand to his companions to signal them to stop.

Luke and La Bonté both followed the direction of the trapper's intent and fixed gaze. The former uttered in a suppressed tone the expressive exclamation, Wagh! – the latter saw nothing but a wood-duck swimming swiftly down the stream, followed by her downy progeny.

Gonneville turned his head, and extending his arm twice with a forward motion up the creek, whispered – "Les sauvages."

"Injuns, sure, and Sioux at that," answered Luke.

Still La Bonté looked, but nothing met his view but the duck with her brood, now rapidly approaching; and as he gazed, the bird suddenly took wing, and, flapping on the water, flew a short distance down the stream and once more settled on it.

"Injuns?" he asked; "where are they?"

"Whar?" repeated old Luke, striking the flint of his rifle, and opening the pan to examine the priming. "What brings a duck a-streakin it down stream, if humans aint behint her? and who's thar in these diggins but Injuns, and the worst kind; and we'd better push to camp, I'm thinking, if we mean to save our hair."

"Sign" sufficient, indeed, it was to all the trappers, who, on being apprised of it, instantly drove in their animals, and picketed them; and hardly had they done so when a band of Indians made their appearance on the banks of the creek, from whence they galloped to the bluff which overlooked the camp at the distance of about six hundred yards; and crowning this, in number some forty or more, commenced brandishing their spears and guns, and whooping loud yells of defiance. The trappers had formed a little breast-work of their packs, forming a semicircle, the chord of which was made by the animals standing in a line, side by side, closely picketed and hobbled. Behind this defence stood the mountaineers, rifle in hand, and silent and determined. The Indians presently descended the bluff on foot, leaving their animals in charge of a few of the party, and, scattering, advanced under cover of the sage bushes which dotted the bottom, to about two hundred yards of the whites. Then a chief advanced before the rest, and made the sign for a talk with the Long-knives, which led to a consultation amongst the latter, as to the policy of acceding to it. They were in doubts as to the nation these Indians belonged to, some bands of the Sioux being friendly, and others bitterly hostile to the whites.

Gonneville, who spoke the Sioux language, and was well acquainted with the nation, affirmed they belonged to a band called the Yanka-taus, well known to be the most evil-disposed of that treacherous nation; another of the party maintaining that they were Brulés, and that the chief advancing towards them was the well-known Tah-sha-tunga or Bull Tail, a most friendly chief of that tribe. The majority, however, trusted to Gonneville, and he volunteered to go out to meet the Indian, and hear what he had to say. Divesting himself of all arms save his butcher-knife, he advanced towards the savage, who awaited his approach, enveloped in the folds of his blanket. At a glance he knew him to be a Yanka-tau, from the peculiar make of his moccasins, and the way in which his face was daubed with paint.

"Howgh!" exclaimed both as they met; and, after a silence of a few moments, the Indian spoke, asking – "Why the Long-knives hid behind their packs, when his band approached? Were they afraid,

or were they preparing a dog-feast to entertain their friends? That the whites were passing through his country, burning his wood, drinking his water, and killing his game; but he knew that they had now come to pay for the mischief they had done, and that the mules and horses they had brought with them were intended as a present to their red friends.

"He was Mah-to-ga-shane," he said, "the Brave Bear: his tongue was short, but his arm long; and he loved rather to speak with his bow and his lance, than with the weapon of a squaw. He had said it: the Long-knives had horses with them and mules; and these were for him, he knew, and for his 'braves.' Let the White-face go back to his people and return with the animals, or he, the 'Brave Bear,' would have to come and take them; and his young men would get mad and would feel blood in their eyes; and then he would have no power over them; and the whites would have to 'go under.'"

The trapper answered shortly. – "The Long-knives," he said, "had brought the horses for themselves – their hearts were big, but not towards the Yanka-taus: and if they had to give up their animals, it would be to *men* and not *squaws*. They were not 'wah-keitcha,'⁴ (French engagés) but Long-knives; and, however short were the tongues of the Yanka-taus, theirs were still shorter, and their rifles longer. The Yanka-taus were dogs and squaws, and the Long-knives spat upon them."

Saying this, the trapper turned his back and rejoined his companions; whilst the Indian slowly proceeded to his people, who, on learning the contemptuous way in which their threats had been treated, testified their anger with loud yells; and, seeking whatever cover was afforded, commenced a scattering volley upon the camp of the mountaineers. The latter reserved their fire, treating with cool indifference the balls which began to rattle about them; but as the Indians, emboldened by this apparent inaction, rushed for a closer position, and exposed their bodies within a long range, half-a-dozen rifles rang from the assailed, and two Indians fell dead, one or two more being wounded. As yet, not one of the whites had been touched, but several of the animals had received wounds from the enemy's fire of balls and arrows. Indeed, the Indians remained at too great a distance to render the volleys from their crazy fusees any thing like effectual, and had to raise their pieces considerably to make their bullets reach as far as the camp. After having lost three of their band killed outright, and many more being wounded, their fire began to slacken, and they drew off to a greater distance, evidently resolved to beat a retreat; and retiring to the bluff, discharged their pieces in a last volley, mounted their horses and galloped off, carrying their wounded with them. This last volley, however, although intended as a mere bravado, unfortunately proved fatal to one of the whites. Gonnevillle, at the moment, was standing on one of the packs, in order to get an uninterrupted sight for a last shot, when one of the random bullets struck him in the breast. La Bonté caught him in his arms as he was about to fall, and, laying the wounded trapper gently on the ground, – they proceeded to strip him of his buckskin hunting-frock, to examine the wound. A glance was sufficient to convince his companions that the blow was mortal. The ball had passed through the lungs; and in a few moments the throat of the wounded man began to swell, as the choking blood ascended, and turned a livid blue colour. But a few drops of purple blood trickled from the wound, – a fatal sign, – and the eyes of the mountaineer were already glazing with death's icy touch. His hand still grasped the barrel of his rifle, which had done good service in the fray. Anon he essayed to speak, but, choked with blood, only a few inarticulate words reached the ears of his companions, who were bending over him.

"Rubbed – out – at – last," they heard him say, the words gurgling in his blood-filled throat; and opening his eyes once more, and looking upwards to take a last look at the bright sun, the trapper turned gently on his side and breathed his last sigh.

With no other tools than their scalp-knives, the hunters dug a grave on the banks of the creek; and whilst some were engaged in this work, others sought the bodies of the Indians they had slain in the attack, and presently returned with three reeking scalps, the trophies of the fight. The body

⁴ The French Canadians are called *wah-keitcha* – "bad medicine" – by the Indians, who account them treacherous and vindictive, and at the same time less daring than the American hunters.

of the mountaineer was then wrapped in a buffalo robe, the scalps being placed on the dead man's breast, laid in the shallow grave, and quickly covered – without a word of prayer, or sigh of grief; for, however much his companions may have felt, not a word escaped them; although the bitten lip and frowning brow told tale of anger more than sorrow, and vowed – what they thought would better please the spirit of the dead man than sorrow – lasting revenge.

Trampling down the earth which filled the grave, they placed upon it a pile of heavy stones; and packing their mules once more, and taking a last look of their comrade's lonely resting-place, they turned their backs upon the stream, which has ever since been known as "Gonneville's Creek."

If the reader casts his eye over any of the recent maps of the western country, which detail the features of the regions embracing the Rocky Mountains, and the vast prairies at their bases, he will not fail to observe that many of the creeks or smaller streams which feed the larger rivers, – as the Missouri, Platte, and Arkansa – are called by familiar proper names, both English and French. These are invariably christened after some unfortunate trapper, killed there in Indian fight; or treacherously slaughtered by the lurking savages, while engaged in trapping beaver on the stream. Thus alone is the memory of these hardy men perpetuated, at least of those whose fate is ascertained: for many, in every season, never return from their hunting expeditions, having met a sudden death from Indians, or a more lingering fate from accident or disease in some of the lonely gorges of the mountains, where no footfall save their own, or the heavy tread of grizzly bear, disturbs the unbroken silence of these awful solitudes. Then, as many winters pass without some old familiar faces making their appearance at the merry rendezvous, their long protracted absence may perhaps occasion such remarks, as to where such and such a mountain worthy can have betaken himself, to which the casual rejoinder of "Gone under, maybe," too often gives a short but certain answer.

In all the philosophy of hardened hearts, our hunters turned from the spot where the unmourned trapper met his death. La Bonté, however, not yet entirely steeled by mountain life to a perfect indifference to human feeling, drew his hard hand across his eye, as the unbidden tear rose from his rough but kindly heart. He could not forget so soon the comrade they had lost, the companionship in the hunt or over the cheerful camp-fire, the narrator of many a tale of dangers past, of sufferings from hunger, cold, and thirst, and from untended wounds, of Indian perils, and of a life spent in such vicissitudes. One tear dropped from the young hunter's eye, and rolled down his cheek – the last for many a long year.

In the forks of the northern branch of the Platte, formed by the junction of the Laramie, they found a big village of the Sioux encamped near the station of one of the fur companies. Here the party broke up; many, finding the alcohol of the traders an impediment to their further progress, remained some time in the vicinity, while La Bonté, Luke, and a trapper named Marcelline, started in a few days to the mountains, to trap on Sweet Water and Medicine Bow. They had leisure, however, to observe all the rascalities connected with the Indian trade, although at this season (August) hardly commenced. However, a band of Indians having come in with several packs of last year's robes, and being anxious to start speedily on their return, a trader from one of the forts had erected his lodge in the village.

Here, he set to work immediately to induce the Indians to trade. First, a chief appointed three "soldiers" to guard the trader's lodge from intrusion; and who, amongst the thieving fraternity, can be invariably trusted. Then the Indians were invited to have a drink – a taste of the fire-water being given to all to incite them to trade. As the crowd presses upon the entrance to the lodge, and those in rear become impatient, some large-mouthed possessor of many friends, who has received a portion of the spirit, makes his way, with his mouth full of the liquor and cheeks distended, through the throng, and is instantly surrounded by his particular friends. Drawing the face of each, by turns, near his own, he squirts a small quantity into his open mouth, until the supply is exhausted, when he returns for more, and repeats the generous distribution.

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