

FROM THURSDAY'S DAILY, APRIL 12, 1888.

Is it Unconstitutional?

An important question to farmers and stockraisers particularly was raised in the Third District Court today, in the suit of D. P. Tarpey vs. S. J. Lonergan et al. The plaintiffs are suing for damage done by the stock of the defendants trespassing on their grounds. The defendants set up that at an election held in Box Elder County, it was agreed that fences should be made and stock permitted to run at large, and as the Tarpey property was not fenced, the plaintiff cannot recover damages. Following is the "fence law" provision:

SEC. 3 Any county or portion thereof may, at a general or special election called for that purpose by the county court, declare by vote of two-thirds of its legal voters in favor of fencing their farms, lots or yards, and allowing their stock to run at large, or who have so declared by vote. In such a case, the first section of this act shall be inoperative, during any period decided upon by such vote.

The plaintiff interposes an objection to the answer of the defendant. His first ground of demurrer is that the section is unconstitutional in that it delegates powers belonging exclusively to the Legislature to the voters, whom it virtually allows to repeal a statute. The other ground is that but 500 votes were cast at the county election on the no fence proposition, while the county shows a total registration of 1600 voters.

The matter was argued by Messrs. Dickson & Varian for the plaintiff, and Mr. John A. Marshall for the defendants, and taken under advisement by the court.

RETURNED MISSIONARIES.

A Party of Elders and Saints from the South.

Elder George W. Baker, Jr., of Mendon, reached this city this morning on his return from a mission to the Southern States. He left home in April, 1886, and spent the entire period of his mission in North Alabama. He had excellent success in his labors, and as a rule was very kindly treated. He left the work in that region in a very favorable condition, there being excellent prospects of its spreading. Elder Baker was one of the party of ten returning missionaries who had been laboring in various parts of the Southern States. On the way home he visited San Luis Valley, Colorado. He returns in good health and spirits which he enjoyed all the time he was in the mission field.

During this forenoon we were called upon by the following Elders who were members of the party of missionaries returning from the Southern States: William Spry, Palmetto Lindsey, Moroni D. Ferrin, David R. Taylor and F. M. Stratford.

Elder Spry resides in the Sixteenth Ward, this city. He left home in October, 1887, and labored in Georgia about a year. He then became attached to the headquarters of the mission at Chattanooga, Tennessee, where he spent the remainder of the time of his absence. In January last he succeeded Elder John Morgan in the presidency of the Southern States mission. He will rest and recuperate at home for a time, but expects to return to his field soon.

Elder Lindsey resides in Paris, Bear Lake County, Idaho. He left home in April, 1886, and labored mostly in East Tennessee, though he spent some time in North Carolina.

Elder Ferrin lives in Eden, Weber County. He left home in January, 1886, and spent the period of his mission in the North Carolina conference, first as a traveling Elder for about a year, when he was appointed president of the conference, which position he held when released.

Elder Taylor's home is in Salem, Utah County. He started on his mission in April, 1886, and labored in East Tennessee for about six months. He was then assigned to the North Carolina conference in which he spent about a year. The last five or six months were spent in Virginia.

Elder Stratford resides in Ogden. He left his home in January, 1886, and spent the whole period of his mission in Georgia. The Elders traveled with a company of Saints numbering 177, who were gathered from various parts of the Southern States. All but 44 of them located in San Luis Valley, Colorado, the latter number having come to Utah. All of the above named Elders except Elder Stratford stopped a short time in San Luis Valley, on the way home. The latter came straight through, having arrived some days ago.

Elder Joseph Bidwell, of Pleasant View, Weber County also returned this morning from a mission of nearly two and a half years. He left this city October 14, 1885, for the northwestern States. The first six months were spent in Minnesota, and the next half year in Wisconsin. The people in these two states have very little interest in the Gospel, and the Elders there have uphill work. Elder Bidwell was transferred to Pennsylvania, where he labored for one year, and then to West Virginia, where the last four months of his mission were spent. In these States there is considerable inquiry regarding the truth, and the prospects are fair for many re-

ceiving the Gospel. West Virginia is included in the Pennsylvania Missionary district, and the Pennsylvania conference will be held at Wetz, Marion County, West Virginia, commencing on Saturday next, April 14. Elder Bidwell has had excellent health during his absence from home, and has greatly enjoyed his labors in the ministry. On his return trip he joined a company of Elders and Saints at San Luis Valley, Colorado, and came home with them.

All of the above brethren feel well, and are in good or fair health. As a rule they give encouraging accounts of the prospects in the fields in which they have been laboring.

MRS. JAMES BROWN POTTER.

A Flattering Reception—A Fine Piece Well Played.

The reasons why dramatic critics have been so diverse in their comments upon the acting and personal appearance of Mrs. James Brown Potter, became apparent before the lady had been more than a few moments before the large audience, which greeted her in the Theatre last evening. As an actress she is a remarkable embodiment of contradictory qualities. Undoubtedly her face is very beautiful, including to a Roman rather than a Grecian ideal. Her figure is tall, litho and willowy, but there is at times a paradoxical air of masculinity in some of her movements. On occasional she assumes a stride resembling that of Henry Irving, and a moment later her movements will be the very poetry of motion. A striking and exquisite grace and a singular lack of it alternate in her attitudes and gestures. Her voice is soft, sweet and melodious, and at all times pleasing; either when engaged in loving dialogue, passionate entreaty or fiery defiance; but her elocution seems at times too slow and heavy and lacks in naturalness, giving the impression that it has been too much studied; or rather that art instead of nature, is sought to be preferred.

In the love scenes of the play last night Mrs. Potter gave an exquisite and beautiful portrayal of the tender passion, and when her wifely honor was sought to be destroyed by the satanic schemer "Gonzales," she displayed the fire of tragic genius, coupled with admirable womanly dignity. In other scenes, however, she was weak and bore the air of an amateur. As a whole however, her impersonation pleased the audience, who applauded her generously, and two or three times called her before the curtain. Her costumes were very beautiful.

The play, "Loyal Love," has a strong plot and abounds in well wrought scenes and eloquent passages. The company is an excellent one. Kyle Bellver is a finished actor of fine abilities. His impersonation of "Prince Pedro" was a splendid rendition, especially in the scenes in which he defies the King, and discovers his wife's abduction. J. E. Kellard as the plotting prime minister, "Gonzales," the lingo of the play, sustained the character in an admirable manner throughout, and the role of each of the remaining members of the cast was well rendered.

Tonight the ever favorite play, "The Lady of Lyons," which so abounds in fine scenes and situations and beautiful and eloquent language, will be presented. We judge it to be a piece well adapted to the abilities of Mrs. Potter and the entire company, and another crowded house will doubtless be present to witness their rendition of it.

FROM FRIDAY'S DAILY, APRIL 13, 1888.

Two More.

Today Charles McCarthy, of American Fork, and Victor Sandgren, of Pleasant Grove, were brought before the commissioner, and were ordered released from custody. They have served a six months term and thirty days additional for the fine, for living with more than one wife.

Shad, Shad.

Last June there were a million shad fry pnt in Jordan River near the Utah & Nevada Railroad bridge. I will give a dollar apiece for a dozen of these shad. The fact that the shad were caught in Jordan River must be established beyond question before the money will be paid for them.

A. M. MUSSER,
Acting Fish Commissioner.

Invites Correspondence.

President F. A. Hammond of San Juan Stake, will leave this city for home this evening. His address is Bluff City, San Juan County, Utah, and he invites correspondence from brethren in the older towns in the Territory, who may, from any cause, desire to change their location, to correspond with him. He will be pleased to inform them of the advantages his section offers to settlers.

Anonymous Communication.

We are in receipt of a communication from Cedar Valley, which gives a very pleasing and accurate description of a social party held in the meeting-house at that place. The writer represents himself to be a stranger in Utah, and his object apparently is to describe a favorite amusement among the "Mor-

mons." The article might prove quite interesting to eastern readers, but it is not reproduced in these columns for two reasons—our readers are so familiar with what it describes that it would have for them little or no interest, and the writer has failed to furnish us with his name. The latter reason alone would prevent the publication of his letter.

Probate Court.

Proceedings in the Salt Lake County Probate Court yesterday:
In the matter of the estate of A. Livingston, deceased; hearing of petition for order of sale of real estate continued.

Estate of Frank Crocker, deceased; proof of publication of order to show cause made; order of sale of real estate made.

Estate of Anna K. Walin, deceased; decree made discharging W. B. Barton as administrator of said estate, and releasing his sureties.

Estate of Benjamin Harker, deceased; order made appointing time and place for settlement of final account, and to hear petition for distribution.

Estate of David Love, deceased; order made for appointing time and place for hearing petition of Isaac M. Waddell, asking that a document filed in the Court be admitted to probate as the last will and testament of said deceased.

Estate of Lewis Robinson, deceased; case continued for administrators to render account.

Estate of George Handley, deceased; order made of publication of notice to creditors, and appointing S. W. Richards, John Conk and William Clark appraisers of said estate.

Third District Court.

Proceedings before Judge Zane today:

Cora B. Mesick vs. Wm. R. Mesick; demurrer to complaint overruled.

George A. Luke vs. Harriet A. Lewis; demurrer to complaint sustained.

Lewis P. Kelsey et al. vs. W. J. Crowther; demurrer to complaint overruled; motion to strike out parts of complaint allowed.

D. P. Tarpey vs. S. J. Lonergan et al.; demurrer to answer overruled.

D. C. McLaughlin vs. Philip Schwartz; demurrer to complaint withdrawn.

John H. Bailey vs. Southern Pacific Railway Co.; demurrer to complaint in intervention argued and submitted.

Henry Whitstone vs. The Salt Lake Herald Co.; demurrer to complaint and motion to strike out parts of complaint argued and submitted.

The grand jury came into court and reported seven indictments under the laws of the United States and one indictment under a Territorial statute.

John H. Luck vs. Salt Lake City et al.; demurrer to complaint sustained and judgment given for defendants.

A. C. Brixen vs. J. R. Walker et al.; demurrer to complaint argued and submitted.

Edward Pickering, of England, was admitted to citizenship.

John Backle et al. vs. South Helena Mining Co.; motion to retax costs allowed.

It is Valid.

The question of the validity of the "no fence" provision of the estray law was decided by Judge Zane today, the section being held to be valid. The Judge stated in overruling the demurrer to the answer in the suit of D. P. Tarpey vs. S. J. Lonergan and others, that the plan of submitting to the voters the suspension of operations of a law for a certain period was in line with the principle of local option, which prevailed in many sections. The idea was to consult the parties immediately interested, and who knew best their own convenience. There was a conflict in the authorities on this point, but those of recent date sustain the view taken by the court in the present instance.

As to the claim that a vote of 590 to 150 in favor of fencing was not the necessary two-thirds majority, when a subsequent registration showed 1600 voters in the county, the method of ascertaining the number of legal voters was not mentioned in the law. It might be done by actual count, by taking the registration list, or by the number of votes cast at the election in question. The first mode is impracticable; the next two are uncertain and incomplete. It is reasonable to assume, under the circumstances which existed at the time of the passage of the law, that the Legislature meant the number of legal voters to be ascertained by the votes cast at the election which was called, and that total should be the guide.

Probably Infanticide.

It is a dry week in Tintic when a sensation is not reported, and this week is no exception to the rule. On Tuesday morning a man was hired to fill a hole at the back of a house in which a woman by the name of Dunbar lives, and becoming suspicious from the circumstances connected with the matter, he reported to Constable Sullivan, and the hole that had been filled at the request of the woman was cleaned out and a full developed babe was found wrapped in blankets, apparently having been dead for some time. A coroner's jury was impaneled and Acting-Coroner Dana held an inquisition which occupied the whole of the day, the developments of which created no little excitement.

Two physicians testified regarding the probable age of the child and the manner in which it came to its death, one stating very positively that it was still born, and the other as positively asserted that it had lived for at least six hours after birth. Some marks of violence were found on the body of the infant and the back of the head was crushed. The jury rendered a verdict that the child had been born alive and had come to its death from some cause to the jurors unknown. It is stated that Mrs. Dunbar has practically admitted that the child was her own in a conversation with the constable, and her known condition previously would seem to indicate that she was the mother of the child. Mrs. Dunbar has been a widow for some years.—*Provo American*, April 12.

Mysterious Disappearance.

The quiet little town of Riverdale, just south of Ogden, on the Weber River, has been thrown into a thrill of excitement over the disappearance of a young man named Riley Cole, a son of Mr. William R. Cole, of that place. It appears that on Monday morning, the 9th, he left his parents' home, and started for Hooper, as was supposed, where he has a sister living. Contrary to his usual custom he did not return home that evening. His parents became alarmed, and on Tuesday morning search was instituted for him after diligent inquiry had first been made as to his whereabouts. No trace of him could be found. The young man has been a severe sufferer from dropsy for some time, and it is supposed that in a fit of pain he sought to end his life in the river. The banks of the Weber were searched and towards evening on Tuesday his tracks were discovered leading directly to the river's edge from the residence. It could be seen where he had sat down on the bank.

He had at times taken chloroform to seek relief from the pain with which he has been afflicted, and one theory is that he has fallen into the river and is drowned. Although diligent efforts have been made to find the body, they had all proved in vain up to a late hour last night.

It is stated that the young man told his folks last Sunday that he would not stand the pain any longer. The family told him he could not help himself and that he would have to bear it. He said that he was determined not to endure it any longer and hence it is supposed that the young man must have put an end to his life. Mr. Cole was 30 years of age and unmarried.—*Ogden Standard*.

Another Proposed Railroad.

The Colorado & California Short Line is the latest development in the way of railroads, and at the Chamber of Commerce meeting in Denver on Wednesday last it received the hearty endorsement of that body. In the discussion the following occurred:

"Gen. B. M. Hughes was called upon and said that in the building of railroads it struck him as peculiar that a road to Salt Lake had never before been proposed. One could be built 200 miles shorter. While solicitor for the overland stage route, it was suggested to him that a nearer line should be had to Salt Lake, and Mr. Edward L. Berthoud, of Golden, was chosen to survey a route, which he did. The route was described.

Speaking about the survey that was made, General Hughes said that Secretary Stanton supplied two companies of United States soldiers and Brigham Young rendered assistance. The survey was made through the Wasatch range to Strawberry valley.

The obstacles on White river were spoken of, which he said could be easily removed. There was plenty of coal in the region proposed to be gone through, more than he thought existed in Colorado and of a superior quality. The only obstacle between here and Salt Lake is the Wasatch mountains. A route can be easily secured. It will be expensive but can be secured, and will be the route for Denver. He did not think that a better man could be secured to make the survey than Mr. Berthoud.

President Fletcher stated that Mr. Berthoud had made a report which was considered too valuable to read at present.

Governor Evans was called upon. He had no prepared speech. He said that General Hughes was the first president of the first road ever built in Colorado. When he first came here he had suggested a route to Berthoud's pass, which was surveyed and found to be practicable. The short route from here to Salt Lake is by the Middle Park. The reason the Union Pacific did not build on the proposed route was because they secured more subsidy for the way they did build.

A Remarkable Tree.

A few days ago an article appeared in the News on the subject of arboriculture, suggesting the propriety of, more extensive efforts on the part of people generally in the direction of planting and cultivating different kinds of trees for the purpose of increasing the product of the Territory in timber shade and fruit trees. In considering the kinds to be planted there is one indigenous to this country that should not be omitted, i. e. the box elder. These trees were round in the cañons and along the water courses of Salt Lake valley when the pioneers first came here in 1847, and make very fine shade trees,

grow to large size, and the timber being a light-colored hard wood, takes a beautiful satin finish, and is well adapted for the manufacture of fine furniture, inland work, etc. A fine sample of this tree can be seen on the Wilkinson corner, one block east of the Court House.

About eighteen years ago, Brother C. Merkley, of this city, pulled up a small box elder sapling, which had grown from the seed since he planted his orchard, and set it out on the sidewalk fronting his lot as a shade tree. Today the heavy branches extend over a breadth of sixty feet, and it extends like distance towards the zenith, while at a point three feet from the ground the trunk measures eight feet in circumference.

"Well," exclaims the reader, "there are many such trees in this city. I see nothing remarkable about that."

Perhaps not, but the remarkable feature in this connection is that the tree is not only intrinsically valuable as a shade tree, and for the amount of valuable timber it contains, but also for its saccharine properties, from which the proprietor makes sugar equal in appearance and flavor to maple sugar made "way down in Maine," a sample of which was exhibited in this office and pronounced by all present a No. 1 article. At the proper season, some time in February, the tree is tapped in much the same way that maples are and the juice boiled down to the proper consistency for granulation into sugar. Of course, from a single tree the amount obtained is limited, but were a large area planted with such trees, the proprietor would be comparatively independent of the "sugar trust" or adulteration by glucose.

The tree from which this sugar is obtained is situated on the north side of North Temple Street, opposite No. 276 west, on the north side of the street.

It is said that the poor Indian "finds sermons in stones and good in everything."

but Brother Merkley is undoubtedly the first in this locality to find sugar in box elders.

A HORRIBLE DEATH.

A Young Man Meets a Terrible Fate on the C. P.

Yesterday morning a frightful accident occurred which deprived a young man, in the prime of youth, of his life. Jonah Evans, who has been in the employ of the C. P. Company as a fireman for nearly four years, began breaking on the freight train between this place and Carlin, last fall. It was while in this capacity that he met his death. About 1 a. m. yesterday the train upon which he was engaged was returning to Ogden. It had just left Bovine, a station about 90 miles west of Terrace, when the accident occurred. The particular circumstances of his death none seemed to be very familiar with. The most reasonable theory, and the one which has gained the greatest credence with railroad people is as follows: Tramps have been in the habit of stealing rides on the freight train quite frequently, and young Evans was on the lookout for them. As the train was leaving Bovine he descended on the side of the box car nearest the engine, and clambered around to the end of the car intending to pass through a small door, which is found on a number of box cars, and see if there were any tramps inside. He managed to get about half way through when the train gave a sudden lurch, his foot slipped and he was precipitated between the cars. He was not missed until the next station was reached, when the train returned in search of him. He was found in a horribly mangled condition, life being extinct. The remains were tenderly gathered up, placed on the train and brought to Ogden, reaching here about noon of yesterday. They were at once taken to Undertaker S. M. Preshaw's, where they were laid out. The head had been entirely severed from his body, as well as his left arm, and both feet were cut off above the ankles. The details of his mangled condition are too horrible to relate. The sight was one that filled all who saw the remains with horror, and many expressions of the fearful calamity daily occurring and caused by railroading were heard by those present.

The deceased was 24 years old and had been residing in Ogden for some time. Two brothers also live here. His father and three brothers reside at Samaria, Idaho. They have been telegraphed for and will be down today. Should they arrive in time he will probably be buried this afternoon. His father was in the city two or three days ago and had just reached home when the news of this terrible calamity was brought to him, summoning him to attend the funeral of his departed son. The young man was well liked among his associates, and many will regret his untimely death.—*Ogden Standard*, April 13.

FROM SATURDAY'S DAILY, APRIL 14, 1888.

Liberated.

Today Jesse R. Turpin, of Grand Salt Lake County, and Edward Cliff who was sentenced in the First District Court were released from the penitentiary, where they have been held for living with more than one wife. They served a six months' term and 80 days for the fine imposed.