DESERET NEWS:
WEEKLY.

TRUTH AND LIBERTY.

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CHARLES W. PENROSE, EDITOR.

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WATER RIGHTS AGAIN.

THE annexed communication comes from Grantsville, Tooele County, from which place other letters have been published on this subject. It may be thought that the differences of opinion existing there can be settled locally, and therefore need not be ventilated in a public journal. But the questions involved are such as are likely to arise in other places, and we therefore take up the subject again, as requested, for the benefit of all who are interested:

GRANTSVILLE, Feb. 19th, 1884.

Editor Deseret News:

You have published some communications in late issues of the NEWS from citizens of this place, on matters in connection with the water question, which is a question of vital importance to all the settlers of this Territory, and one about which there appears still to be a great deal of ignorance and, in consequence, is a source of many disputes and much ill-feeling. Information or advice from a well informed and steadfast friend such as the NEWS has ever proved is an immense factor in allaying irritation, and directing the minds of all concerned into the way of truth and justice, and it is with this end in view that I desire your attention to the following:

Suppose a number of men settle on a small stream and cultivate what land it is capable of irrigating. In time, through the favorable change of seasons, the supply increases and other settlers make farms, but the original settlers refuse to allow them to use any water unless it is purchased from them, on the grounds that they—the original settlers—own all the water that comes or may come in the creek; what right or claim on the supply of water will those have who purchased the privilege or right of irrigating their farms from those original settlers, when the supply of water is lessened by unfavorable seasons, and is the claim of absolute ownership of all water that may run into the creek, a correct one?

Land, after a few years of careful cultivation, requires less water to produce crops. Can the owner of such a farm sell what he conceives to be his surplus water claim, and will the purchaser have the same claim upon water privileges in the amount purchased as the seller claimed, or in other words: If the owner of five acres of land finds he can irrigate six acres with the amount in the time allotted by the watermaster, has he the right to sell or rent to others the extra supply above his needs, and will the purchase constitute a claim?

Can the original settlers dispose of their acquired water claims independent of their land?

If meadow land that has a water right so long in the spring as the other crops do not require it is cultivated for other crops, can it claim the right of water through the season in which those crops need it? If so, why does it not also have the same claim while still under grass? ENQUIRER.

It should be clearly understood that water rights differ in some respects from land rights. The title to land is absolute, the title to water is to some extent contingent. Water owners, that is, those who have established water claims by law, only hold the right to "*the use* of a certain quantity of water, to the extent of and reasonable necessity for such use thereof." They do not own the water, they merely own the right to its use, and that use is limited by the claim established and certified to by the Water Commissioners. If, then, the natural supply in any given locality increases, the original settlers do not own the increase by natural right. The use of the increase is open to appropriation either by the original settlers or new comers. The law says the increase must be unusual, "exceeding seven years' average flow of the water," to make it subject to appropriation by others than the prior appropriators. Should the supply decrease, returning to its former volume or less, the new appropriators would not be entitled to the water to the detriment of the prior holders, because it is only the right to the use of the water within certain limits which is held by the owners, and priority of rights must be respected. But should the old settlers *sell* the right to a certain portion of the source of supply, then, in case of a decrease, unless it was specially provided otherpise in the deed of sale, the new owners would share with the old in proportion to the amount of their respective claims, for the new owners acquire by purchase rights as good as those of the old and those rights must also be respected.

Local customs have much to do with the determination of these questions. Where the water is divided by measurement, each claimant receiving so many cubic inches for a given period, some of the difficulties arising in the settlement of disputes like these may be avoided. But the custom of dividing by fractional parts of the source of supply, with a limitation as to time, is the method in general use, and on that basis we make our argument.

The owner of a farm has the right to sell or rent the whole or a portion of his lawful claim to the use of water, and the purchase will constitute a lawful claim, if the water right is personal property and has not been made appurtenant to the land. This point must be considered by purchasers of water rights, the law leaving it optional with the owner to have his claim appurtenant to his land, or established independently, as personal property. If the right is attached to the land, we should say it can only be conveyed with the land, but if it is separate, of course a lawful purchase would constitute a lawful claim to the purchaser.

The right to the use of water for meadow land, which is usually limited to a certain season of the year, is not changed in any way by the action of the owner in reference to his land. If he chooses to plow his meadow and plant it with a crop needing irrigation at a later season, that does not give him the right to change the time of the use of the water which he only held claim to for use in the spring. He has no more right to change the time of its use than the quantity. His right is defined both as to quantity and time and must be so limited, or injustice would work towards other claimants. The owners of water rights for field crops, must not be curtailed in their rights because the owner of water for meadow land chooses to convert his grass land to "plow land." He can only use the water to which he is entitled, in the season thereof.

Difficulties will rarely arise, even in regard to the distribution of water, which is a sensitive subject, when the parties are animated by justice in respect for the rights of others. It is when selfishness rules that trouble arises. The golden rule is of beautiful application when water rights are involved. Let every irrigator seek his neighbor's good as much as his own. But if that higher law cannot be fully reached, let every farmer at least respect the claims and rights of those who depend, as he does, upon a share of the water supply for the means by which to live and thrive.

We have answered these questions without knowledge of the local customs and usages of the place where our correspondent lives, and therefore have have had to be guided by general principles, and the plain intent of the law. We trust that our replies will be found sufficient.

THE TABERNACLE CHOIR REUNION.

THE concert and ball to be given at the Theatre next Wednesday evening will probably be one of the most popular entertainments yet provided this season. A number of causes will conduce to render it so. Those who attend will have no reason to feel induced to dress in anything like stylish fashion for the occasion. Simplicity of attire and freedom of manners are expected to be among the prevailing features.

One of the objects of the entertainment is to contribute to swell the fund for the relief of the B. Y. Academy of Provo, to enable that most worthy institution to recover from the late disaster it met with by fire. This feature of the benefits should tend to attract to the concert and ball the friends of genuine education.

The other beneficiare is the Tabernacle Choir, under whose auspices the entertainment will be given. It is one of the most worthy organizations in the Territory, being composed of well known and respected members of the community who do a great deal of effective public service without compensation. Their performance in the worshipping congregations of the Saints constitute a delightful exercise in the assemblages, greatly appreciated by all who listen to them, including visitors to our city from a distance. A desire to give some recognition of the devotion and abilities of these able choristers will doubtless draw to the approaching concert and ball a large patronage.

The caterer for the occasion is one whose name has lately been established for ability to please the most fastidious in that line—Mr. S. F. Ball, formerly of London.

Those who desire to participate in the reunion should secure their tickets in time.

A SINGULAR "BENEFIT" ASSOCIATION.

IN our advertising columns appears a notice of an insurance company called the "Fidelity Benefit Association." We have been asked to endorse it and explain its advantages. On close examination we have failed to find any particular benefit it is likely to confer upon those who become members of the association. We can see wherein pecuniary benefits will accrue to its projectors and agents, but this will not materially assist the public. The directors of the company are Illinois men, with the exception of one, who is the manager and agent for Utah and a member of the Church. We have nothing to ssy about them or either of them personally. What we desire to direct attention to is the principle of the concern.

A person taking out a policy pays to the "Company" from twelve to fifteen dollars entrance fee, and receives in return a piece of paper called a policy or certificate. If a member of the Association dies, all the other member are assessed from one dollar and a half to three dollars each. The amount thus assessed, less fifty cents per member which goes to the "Company," is to be paid to the person in whose favor the policy is made out. This assessment money is not handled by the "Company." It goes into bank through a member who is designated to deposit it, and thus the "Company" is sayed from any trouble or responsibility in relation to it.

The question that naturally arises is, what do the people who engage in this affair receive in return for the twelve or fifteen dollars given to the "gentlemanly agent," and the half dollar a head assessments? The answer is, *nothing at all*. At least that is the only answer that we can find to the question. The Fidelity Benefit Association seems to be fraught with great benefit to those who manage to gather up the entrance fees, but none at all to the payers of the cash.

We were informed by the agent that he has "insured," as he terms it, several hundred of our people in the North, including some prominent gentlemen. We could have secured a standing in the concern without expense, as we learn some others have done, but we are of opinion that this would simply give an opportunity to use certain names as inducements to simple people, to hand over their twelve or fifteen dollars for the benefit of the enterprising gentlemen who have started the concern.

If any of our friends are anxious to assist persons traveling around the country by giving them money in this way, of course we can offer no objection. But we would like them to understand our views on this matter, and if they give their cash away to do it with their eyes open. The fact that the advertisement appears in the NEWS, is not any endorsement of the concern, any more than a quack medicine notice in our columns is a recommendation to swallow the nostrums therein offered for sale. An advertisement is like a sign painted on a board; the painter is not responsibble for the genuineness of the article attention to which is thus directed. We consider it our duty to explain the nature of this Fidelity Association and leave the matter to the good sense of the public.

EDUCATION OF DEAF MUTES.

BY petition of Mr. Wm. Woods the subject of the education of mutes has been brought to the attention of the Legislature. It appears, from information obtained by that gentleman, that there are forty-two persons belonging to that unfortunate class residing in the Territory. There are no facilities for educating them, and it is to be hoped that favorable action will be taken upon the petition.

The nearest institution where mutes are taught is in Colorado, and the expense of taking a pupil there and return alone is such as to bar poor people from its benefits, while the educational course is $200 for the school year of nine months.

The progress made by the pupils of the Colorado institution, which is sustained by a light State tax, appears to be very marked. Mr. Woods' little girl became an inmate some time last October, and inside of five months she has learned to write, there being before us a letter in a fair hand written by her and addressed to her father. The institution is admirably conducted, as we know from personal observation, and is a credit to the State, and the lady and gentleman in charge of the establishment.

But some steps should be taken or some means provided in this Territory, to enable parents who have deaf and dumb children to keep them close to home while they are being educated. That they should be educated is beyond question, as the information and facilities for mental exercise imparted by that means must necessarily conduce to make their lives—more or less associated with sadness more cheerful and less burdensome. Besides an entirely uneducated element in society is dangerons, or in any event comparatively useless.

It has been suggested that temporary arrangements could be made by devoting a part of the Territorial Insane Asylum to the purpose of eduocating deaf mutes. We are not prepared at present to advocate the adoption of this suggestion. It has some objections, one of which is that there should be none but the most cheerful and intelligent outside associations with an institute for the education of mutes. Even the approximate closeness of people bereft of reason appears repugnant to us in that connection. The subject is in the hands of the Council committee on education, who will doubtless make an intelligent report upon it; such as the Assembly will be prepared to adopt.

Another revolt has broken out in Crete.

THE SCHOOL LAWS.

THE new school bill, which has passed the House and is now under consideration by the Council, appears to us to contain some crudities, and altogether is not much of an improvement upon the law as it now stands upon our statute books.

The abolition of the office of Territorial Superintendent is, in our opinion, not a wise measure, as much good can be accomplished by a competent officer in taking the oversight of educational affairs in the Territory and compiling statistics and other information of general benefit to the educational cause.

The provisions in regard to the organization of school districts and boards of trustees seem a little mixed and calculated to confuse, The second section provides that "on or before the first Monday in July annually the trustees shall meet and organize by the election from their number of a chairman and secretary." The fifth section provides that every school district shall be deemed duly organized when any of two of the trustees elected at the first meeting shall have filed their oath of office." The fourth sectiona provides that trustee shall be elected "on the first Monday in May annually," and "on or before the first Monday in July thereafter the said trustee shall qualify by taking and subscribing an oath of office which shall be filed with the County Clerk." The seventh section provides that "Within twenty days after election the trustees shall file their oath of office with the County Clerk and shall meet and organize as a board of trustees as provided in this chapter." These several provisions appear to be conflicting, and if there is, as there may be, a key to their harmonious solution it is not patent to the common eye. Something not so likely to confuse would be preferable in a legislative act.

The twenty-fourth section provides for the usual sum in aid of the Normal Department of the Deseret University, which is all right as far as it goes, but it appropriates further sums of three thousand dollars annually each to the "Normal Department in Ogden City" and the "Normal Department in Beaver City." What Normal Department of Ogden City and what of Beaver City? We are not aware of the existence of any such institution in either place. The appropriation by law, of funds to institutions that have no legal existence, seems to us a little out of the ordinary method of legislative business. We would not object to that, however, if it was an improvement upon the general mode, and providing it was consistent. We will not here discuss the necessity or policy of such a disposition of revenue, but merely ask: Would it not be better to create and establish these Normal Departments before attempting to vote public money towards their support?

The tenth section provides for the assessment of a tax not exceeding two per cent. of the assessed value of the taxable property in the district, by a majority, instead of a two-thirds, vote. This is probably a good change. But we doubt the wisdom of another provision in the same section, making the County Assessor and Collector the collector of school taxes. The money will go into the County Treasury to be drawn by warrants signed by the chairman and secretary of the board of trustees, as provided in the second and eleventh sections. This will, we believe, cripple the trustees where school buildings are being erected, and where the taxes are needed for immediate use. The same delays that occur in the payment of county and territorial taxes will attend the payment of special school taxes, and the trustees will be hampered for need of the funds. Where no buildings are in process of erection, and a small tax is assessed for current expenses, the trustees will be put to great inconvenience, and subject to delays for a few dollars to buy fuel or lighting material, or for any incidental expenses.

In our opinion the business of our school districts would be greatly facilitated, if the old tax of one fourth of one per cent was restored, to be collected without any school meeting or vote, and to be used for general school purposes. As the law stands now not a cent can be obtained by the trustees for incidentals without the calling of a meeting and the assessment of a tax, which is often very difficult of accomplishment, and as the regular school tax assessed under the territorial revenue law can only be expended for the payment of teachers, the trustees are frequently left without any funds for current school expenses.

We think that if the school law is to be remodeled, it would be better either to make the general territorial tax large enough to pay all the expenses of the conduct of our district schools, or else to abolish the present three mills tax, and leave the whole matter open to the people in their respective districts, giving them power, by local option, to choose whether they will have schools in their own districts entirely supported by taxation, or whether tuition fees shall prevail or a mixed policy be pursued.

We further suggest that the people who send their children to a district school ought to have a voice in the election of the school trustees. These are not territorial or county officers. They are not officials of the same character as those chosen at the regular elections. They are selected by the people in "town meetings," as they would be called in the States. Men and women who are interested, in family and in property, whether they are registered voters or not, whether they are full fledged citizens or not, should of right have something to say in the selection of the persons who are to manage their local school affairs. Give the people who are interested power to choose the trustees of their respective districts, and the taxpayers power to assess upon themselves taxes to any amount sufficient to conduct their own schools in every respect, whether for the building and furnishing of school houses, the purchase of books, maps, charts, etc., the payment of teachers, the incidental expenses necessary to the proper conduct of the schools or anything else useful. Let taxes be collected and made collectable by law in the district, by district collectors, and used by the trustees, they giving full and detailed accounts, properly audited, to the taxpayers of all their doings, and there will be nothing to hinder the establishment and continuance of flourishing schools all over the Territory. The school law now presented does not seem to us to meet the present public requirements.

LOCAL NEWS.

FROM SATURDAY'S DAILY, FEB. 23.

Priesthood Meeting.—The regular monthly Priesthood Meeting of this Stake will convene in the Salt Lake Assembly Hall, on Saturday, March 1st, 1884, at 11 a. m.

WILLIAM W. TAYLOR,
Stake Clerk.

Slightly "Off."—In a late issue of the NEWS, in referring to a big suit for damages, we stated that Wm. K. Reid was the justice of the peace who was sued. This was not correct, F. R. Kenner is the justice in question and not Reid.

Summit Snow.—The heaviest fall of snow for the last four years, accompanied by very heavy winds, has been experienced at Peoa, Summit County, within the last few days. It piled the snow in large drifts. The storm has ceased, but the clouds hang heavy around the mountains. The snow is two feet deep on the level.

Caledonia Society.—A meeting of the Caledonia Society will be held in Calder's Music Hall this evening at 7:30 o'clock, for the purpose of receiving the teport of the committee appointed to revise the constitution and bye-laws; also to admit new members and collect dues. It is intended to give the first of the regular semi-monthly entertainments, in which the ladies will participate, on the second Saturday in March.

Painful Mishap.—A little boy named Smith had his arm badly crushed and lacerated last Monday evening, while riding on a hand-car on the D. & R. G. Railway. It appears that some men were on the car running up the track to get out of the way of an approaching train, when the boy Smith, who had jumped on the car, accidentally got his arm in the cogs of the wheel, with the result above stated. He was attended to properly and is getting along favorably.

False Alarm.—Misscalls to the Fire Department seem to be the *disorder* of the day, since the inauguration of the District Telegraph. Yesterday morning the town was alarmed by the ringing of the fire bell, only to find out later that a lady at the Continental Hotel, in ringing for some oranges, had hit the wrong bell and brought to her rescue the whole fire brigade. To cap the climax of the joke, Chief Ottinger and his men, on learning the true status of the affair, forthwith purchased a box of oranges and sent them to the hotel, addressed to the lady who sounded the alarm.

Business Transferred.—The agency for the celebrated Mitchell Wagon, with the standard line of agricultural implements and machinery, hitherto owned and handled by Mr. L. B. Mattison, has this day changed hands, as will be seen by a notice published elsewhere. The firm of Grant, Odell & Co. are the purchasers, and will hereafter conduct the business.

Mr. H. J. Grant, of the well known firm of this city, his brother, Mr. J. Grant, of Frisco, and Mr. Geo. T. Odell, formerly of Ogden, are the gentlemen composing the new firm. Messrs. Odell and J. F. Grant will devote their entire attention to the business. Mr. Lewis, of the firm of Michell, Lewis & Co., Racine, Wisconsin, is in the city and has contracted with Grant, Odell & Co.

These gentlemen are well and favorably known in Utah business circles, and there is no question that the business they have now entered into will flourish under their able management.

Third District Conrt.—Proceedings before Chief Justice Hunter, on Saturday, Feb. 23, 1884.

Green and Austin vs. Roberts et. al.; answer withdrawn and judgment.

People, etc. vs. John T. Curran, assault to rob; sentence—$50 fine and 30 days in county jail.

People, etc. vs. John Kelley, grand larceny; sentence—one year in the Utah penitentiary.

People, etc. vs. Alex. S. Hill; embezzlement; on remittitur of Supreme Court reversing demurrer, overrruled and defendant allowed to plead.

People, etc. vs. John A. Compton, perjury; defendant arraigned, plea not guilty; bail $300.

People, etc. vs. Peter Wimmer, perjury; same.