

DESERET NEWS:

WEEKLY.

TRUTH AND LIBERTY.

WEDNESDAY, - AUGUST 11, 1880.

[From Tuesday's Daily, Aug. 3.]

THE ELECTION AND ITS LESSONS.

As there was no opposition to the People's Ticket, the election yesterday was without excitement and but a light vote was polled. It takes some greater incentive than the mere duty of exercising a right to induce some people to go to the polls on election days. If there were any perceptible likelihoods of danger they would be up and doing, but in the absence of anything unusual, they see no necessity for exertion and are willing to let the power they hold remain dormant. Others, who are alive to the duties of citizens, seeing the necessity of being always ready and counting one on the right side at every opportunity, make it a point to put their votes where they will do the most good every time, cultivating the wise habit of using the ballot without fail.

But there was another reason besides the apathy of some of the voters why the vote yesterday was so light. Quite a number of citizens went away disappointed from the polling places because their names did not appear on the Registry List. This was the case at the election in 1878. At that time, in consequence of mistakes in copying, a great many names of persons who had been duly registered according to law were omitted from the list, they therefore could not vote, although they had taken the oath required, and were thus far properly qualified. We presume that mistake has since been rectified.

The law provides for the revision of the Registry List, and for an annual revisiting of the dwelling houses in each precinct, to find out whether any person whose name is on the list has died, removed, or in any other way become disqualified as a voter, so that the name may be erased from the list, and also to find out whether any qualified voter lives in the precinct whose name does not appear on the list, in order that it may be added. If this provision of the law is diligently carried out, we are of the opinion that many votes might be gained for the People's Ticket.

But a large number of citizens were disappointed yesterday in consequence of a misunderstanding. They had duly registered under the municipal ordinance, and were qualified to vote at a municipal election, but their names, although appearing on the city Registry List, did not appear on the county Registry List, and they could not therefore be permitted to vote for county and territorial officers. The law provides that during the week commencing on the first Monday in June, any person whose name is not found on the Registry List may appear at the office of the County Assessor, and by being properly registered have his name added to the list.

There is a special provision for the entry of names of voters previously omitted, by the Assessor or his deputy during the week commencing on the second Monday in September of the present year, and every second year thereafter. It would be well for every citizen possessing the qualifications of a voter, whose name does not appear on the Registry list, or whose name is on the list of the wrong precinct, to see that the list is rectified so far as he is concerned, at the time last above mentioned. This can be done by seeing the assessor at his office in the County Court House.

It is very important that every person, male and female, who can truthfully take the oath required shall be registered. It is equally important that the Registry List shall contain the names of every person who is registered, and that they appear in the proper precinct. Omissions and mistakes may work no injury when there is no contest, although they ought not to occur in official documents, but in case of opposition, division and the contingencies that may arise, such errors might be fatal to the causes of the People's Party in the counties where they occur.

The officers whose duty it is to attend to these matters cannot be

too careful, and the people themselves cannot be too diligent in availing themselves of all the rights and privileges of the law in relation to the suffrage. As fast as the young folks arrive at majority they should be registered if otherwise qualified as citizens. Every person over twenty-one years of age who is a native born or naturalized citizen of the United States, who is a taxpayer and a resident of the precinct six months, or if a female, is the wife, widow or daughter of a citizen, should be duly registered and added to the list of voters.

The time has gone when dilatoriness and carelessness in citizens or officials can be condoned without censure. Every one must be up and doing, and all things required by law must be performed in the season thereof and in the manner prescribed.

COLLECTING SCHOOL TAXES.

We received this morning the annexed communication:

Editors Deseret News:

Dear Sirs.—The new school law provides that by a two-thirds vote a tax can be assessed in each school district for local school purposes. Is it imperative that said tax should be collected in the year that it is voted for or can it be collected at any subsequent period, that the Trustees may determine upon.

Please answer the above through your columns, and oblige,

Yours truly,

ONE OF THE TRUSTEES.

We are of the opinion that it is not imperative that the tax referred to shall be collected during the year in which it is assessed, if the trustees do not so determine. The percentage of tax is fixed by the taxpayers themselves, at a meeting called for that purpose, the law limiting the maximum amount to the sum of two per cent. per annum. The assessment is made within the time directed by the trustees. And the time of collection is also fixed by the trustees, with the proviso, as we understand it, that it shall not be less than thirty days from the time the assessment roll is handed to the collector after it has been corrected and approved by the trustees. The law plainly says that, "They shall fix the time within which the tax shall be paid," and that the collector "shall proceed to collect the same within the time specified by the trustees." In the absence of any provision that the tax must be paid within the year, we see no reason to doubt the correctness of the view we have expressed.

We should think that the most satisfactory plan, both for the trustees and the taxpayers, would be to determine when the tax should be collectable, at the meeting at which it is assessed. A mutual understanding and agreement of this kind would prevent much friction and ill-feeling. Of course when taxpayers meet and agree upon the levying of a certain amount of tax on their property, it is generally understood that the assessment will be for that year and be collected with due expedition. For people are not likely to agree to be taxed unless the means are needed at the time. If not wanted until a year ahead, they would in all probability postpone for a year the levying of a tax.

Still, there is nothing in the law to compel the collection of the tax during the year of its assessment, if the time fixed by the trustees is not within that year. But if they have fixed the time within the year, and notice has been given to the taxpayers by the collector, within ninety days after that time the taxes become delinquent, and a list thereof must be handed to the county collector, who is required to proceed and enforce collection, as in the case of other delinquent taxes.

The trustees, who are the officers or servants of the people, should carry out the wishes of the people as expressed in their vote at the school meeting, and the law evidently intends, by entrusting to the trustees the fixing of the time for the collection of the tax, that it shall not be too soon, so as to be burdensome, nor too late, so as to thwart the purpose for which the tax was assessed. That time, it would be naturally supposed, would be within the year of assessment, but it is not so specified in the letter of the law.

"Nothing can intimidate me from doing what I believe to be honest and right."—Hancock.

PROTECTING THE STREAMS.

On the 31st ult., we published, with some comments, a communication concerning the fouling of the waters of City Creek. The letter was from an active member of the Fish and Game Protective Society, who has since, with his assistants, pushed the matter before the attention of the local authorities. The consequence is that a sheep-herder, in the absence of the sheep-owner, has been brought before Justice Pyper and fined twenty-five dollars and costs. The prosecution was taken under the Act for the Preservation of Fish and Game, as amended at the last session of the Legislature, which provides that,

"Every person who puts into the waters of this Territory any poisonous or explosive substance, or anything injurious to fish, or that renders the water unfit for household purposes, is guilty of a misdemeanor."

The maximum penalty for this offence is a fine not exceeding three hundred dollars and imprisonment not exceeding six months.

We give publicity to this case that it may prove a warning to all who are guilty of wilfully, or by carelessness, causing the waters of our mountain streams to become unfit for domestic purposes. Sheep-raisers must keep their animals away from the streams, or if they drive them to water must take good care that it is not befouled by them.

We understand that the municipal officers are taking measures to clear the creek of any animal deposits that may have accumulated, and to preserve its waters from future contamination. This course should be adopted throughout the Territory, and the executors of the law, when they detect any one befouling the streams, can find a good precedent for a prosecution in the case decided to-day.

We are informed that giant powder is being used for the destruction of fish in the creeks and rivers. Any person who is knowing to the facts in such case should communicate them to the Fish and Game Society, who will vigorously prosecute the offender. If this practice is allowed to continue, our mountain streams will soon be denuded of fish, which will be as great a cause of grief to lovers of trout and other finny delicacies, as to the patient devotees of the hook and line.

The streams must be protected, and we commend the course of the Society in their active measures for the public welfare.

WATER RIGHTS AND WATER WRONGS.

It will take some time and a great deal of patience and good judgment to determine and settle the rights of the land owners of Utah to the use of water for irrigation. The law passed at the last session of the Legislature is not yet fully understood by the people, and even the Water Commissioners appointed under that law, hold various opinions in regard to its meaning. But this is not at all strange, in view of the fact that one learned Judge at least, has gone astray in relation to it, giving a decision subversive of the rights of very important and extensive corporations, evidently through a misapprehension of the subject of irrigation in general and the Utah statutes relating to it in particular.

We receive many requests for explanations of points in the new law, which indicate that those who are principally interested do not study the statute in all its bearings, or that they do like some people in their scripture investigations,—start with a theory of their own and interpret the text to sustain their preconceived opinions.

It should be understood by those who complain of ambiguity or insufficient clearness of the wording of the new law, that it was not enacted in its original form. Our late Governor, after reading the bill as it first passed both Houses of the Assembly, thought there was too much of it for the ordinary farmer to understand, and so refused to sign it unless it was cut down considerably. He seemed to imagine that the thing would be made easier to comprehend, by the same process that a log is made easier to handle, and so insisted upon having a good piece

of it chopped off. He measured the farmers' power of comprehension by the meter of his own intellect, and as he could not understand the bill he imagined nobody else could. He forgot that a practical irrigator might understand things of which even a Governor might be ignorant. But in cutting it down it was mutilated and made less definite and perspicuous. Some of the very clauses that were thrown away were needed to make others that were retained clear and unequivocal.

The bill was framed by a lawyer who had devoted much time to the subject, and had gained large experience in practical irrigation and in disputes arising from it. The committees of both Houses also well understood the wants of the Territory, and more time was spent on the measure than was afterwards mutilated than on any other bill before the Assembly. It was not perfect by any means. Its phraseology was, on a first reading, rather obscure to an ordinary mind. But the more it was studied the better it appeared, and its excellencies were developed by scrutiny. And the hasty curtailment of the bill certainly did not add to its merits or its completeness. However, after the screws were put on by "the one man power," it was that or nothing, therefore "that" was passed. So much by way of explanation about the passage of the law.

Now in regard to some simple points which we are asked to explain. "Does a primary right accrue to a person who has used the water for seven years in the past, or must he use it for seven years after the passage of the law to secure that right?" Undoubtedly a primary right is recognized by the law to have vested and accrued to all persons who up to the date of its passage had been in the peaceable, uninterrupted and continuous use of the water for seven years past. The law, it should be observed, does not create or confer water rights. It merely recognizes and acknowledges the existence of those rights under certain conditions. Water Commissioners have no power whatever to confer water rights. They can but determine their existence under the conditions laid down in the law, and certify thereto.

"Is it necessary that water shall be divided by inch measurement, and must applicants to the Commissioners for certain portions of water ask for so many cubic inches?" No, it is not necessary. In some cases it would be entirely impracticable. For instance, a certain company or association of persons has a vested right to one-third of a natural source of supply. If that source is of uniform flow the third might be determined by so many cubic inches. But when the stream is fluctuating in volume, a definite quantity in cubic inches cannot be applied for nor distributed. The law says it may be so measured, but also that it may be measured "by fractional parts;" as, one-half, one-third, one-fourth and so on, of the whole source of supply, or by such fractional parts with a limitation as to periods of time when it may be used. Each company or person should know (and establish his right to) what portion of a natural source of supply has accrued to it or him by usage or other accretion, and apply for that portion to the Water Commissioners, who have the duty of making the division and will distribute it "according to the nature and extent of recorded rights."

"What about the rights of cities to the control of the waters?" Some municipalities have chartered rights in relation to the control of certain streams or other natural sources of supply. We presume that they are valid. Having been conferred by the same legislative authority which has created the office of Water Commissioner, we should judge that the municipal rights conferred by charter are equally good in law with those powers bestowed by law on the Water Commissioners. Those municipalities which have no chartered rights to the control of natural sources of supply, speaking on general principles, will have to obtain their portions of streams as other corporations under the new law. This, however, may not apply in every case; each must be determined according to rights that have vested and accrued, and the customs and usages of each locality must be taken into consideration, as they are recognized by Act of Congress; and therefore it would be impossible to lay down in a newspaper article a simple rule applicable to all.

There is one thing that should be clearly understood by every one. That is, a right to the use of water under the law only extends to "the reasonable necessity" for such use thereof. Water rights are different from land rights or personal property rights. We understand that the Judge to whom we have alluded in this article, stated from the bench that a man's right to water was the same as his right to his horse. That he might make a hole in the ground, if he could, and pour his portion of the water into it or do just what he liked with it. The Judge confessed that he had not studied the law closely. He might have spared himself from such a confession to those who have studied it. No man has an absolute right to so much water for irrigation. His right only amounts to the use of it, and that but to "the reasonable necessity" for such use thereof." (Sec. 6, Act on "Water Rights," Laws of Utah, 1880, p. 37.) Water is too precious in this arid region to be wasted, or for powers to be given to one person in relation to it, detrimental to others with similar rights.

The various Irrigating Companies organized under the laws of the Territory are not affected by the new statute. Their powers remain. Their by-laws hold good. The new law confirms rather than abrogates them. (Sec. 16, *Ibid.*) A judicial decision to the contrary should be appealed from until justice is obtained. There are no more important industrial organizations in the country than the Irrigation Companies, which have been organized for the purpose of diverting the unappropriated waters of our creeks and rivers upon the parched and desert soil; thus turning the wilderness into a fruitful field and making wealth for the district and the nation. Courts should throw around them the protection of the law against factious litigants, desirous of shirking well understood obligations and of crippling the very companies from which they have obtained their chances of making a living. It will be found on fair investigation that those companies have a legal existence and legal rights which cannot be ruled away by the opinion of a Judge, who, by his own admission, has not fully studied the law concerning them.

We view the subject of water rights as one of the vital questions of the times in this Territory, and hope that out of the beginning that has been made for the settlement of claims to the use of water, a full and satisfactory law or series of laws may yet be framed, which will be definite and complete as to make possible to set all water disputes at rest for ever; "a consummation devoutly to be wished."

THE RIGHTS AND WRONGS OF VOTERS.

ADVICE from the counties of Beaver and Tooele show that the election returns from certain precincts had to be thrown out, in consequence of informalities. In Tooele County the returns from Ophir were rejected because persons were permitted to vote in that precinct who had not been registered according to law. In Beaver County the returns from Milford and three other precincts had to be rejected for a similar reason.

The casting out of the Ophir returns had no effect on the election in Tooele County, because the majority in favor of the People's Ticket was so large as to be unaffected by the votes either way of that small precinct. But in Beaver County it is somewhat different. The rejecting of the returns in the precincts referred to has the effect of defeating the "Liberal" candidate for sheriff, the only office on the ticket not conceded to the People's Party, and consequently the whole People's Ticket is triumphant.

In all likelihoods this will raise a small tempest in "Liberal" localities, and much sound and fury will be wasted "on the desert air." The "Liberals" never did like the registration law after it was passed, although they argued vociferously in favor of registration as a substitute for the "marked ballot" system, when there was no probability of its adoption. The law guards the ballot box and that does not suit them. The Act providing for the Registration of voters is very definite and strict. No Judge of Election is permitted to receive and place