DESERET NEWS:

WEEKLY.

TRUTH AND LIBERTY.

PRINTED AND PUBLISHED BY THE

DESERET NEWS COMPANY.

CHARLES W. PENROSE, EDITOR.

WEDNESDAY, - FEB 8, 1888.

"A NARROW ESCAPE."

A TELEGRAM in today's NEWS lets in some light on the subject recently mentioned of the Democratic split in New York, the State Committee, it will be remembered, being a tie, 17 to 17, these figures representing the respective strength of President Cleveland and Governor Hill.

It appears from the later dispatch that the Governor has now thrown off all disguise and appears in the character which he has long been suspected of assuming under the vestments of seeming friendship for his former chief—that of candidate for the Presidency. He not only unmasked on the occasion referred to, but used all his influence and strategy to compass the complete overthrow of the President by winning over one of the latter's supporters and thus electing his own candidate for member of the national executive committee. Had the scheme been successful he would have had but little difficulty in capturing the State's delegation in the national convention, and and as it will number 72, it is easily seen that a great stride in the direction of securing the nomination for himself would thus have been taken; he could certainly have counted on as many more scattering votes on the first ballot, and 144 votes to begin with is a pretty big showing. But it was not thus to be. Cleveland's adherents stood firm and the result was no choice, leaving all differences now to be settled by the executive committee itself. That this will be done in harmony with the President's views and interests is foreshadowed by the logic of the situation and by the dispatch referred to. But it is spoken of as a "narrow escape" for the latter gentleman, who came thus near being "slaughtered in the house of his friends," and all, doubtless, because they were not looking for anything of the kind.

Governor Hill is an astute politician and an excellent official. His state papers are regarded as exceptionally able, and he has so far made few if any mistakes. We believe, however, we voice the sentiment of nine-tenths of those of his party when we say that had his late plan succeeded, it would have been a serious mistake. Not that he is not qualified and able, and would not apparently make an excellent President, but for the reason that it is unwise to change leaders in front of the opposition, particularly when the leader has been so nearly named for the place that his regular nomination would seem to be a mere formality.

When the party has settled down to a candidate, to unsettle them produces confusion and dissipates the compactness previously prevailing. This breaking off from the drift of party sentiment after it has been presented and accepted by the majority, or departing from the traditions of a party too hastily, has been tried twice by the Democrats in national elections and the result was disaster and defeat each time. The first occasion was in 1860, when Stephen A. Douglas was nominated on a platform embodying the national in preference to the State rule idea, and rather than support him, although recognizing that with him in the chair they would have the half loaf which is better than no bread, the Southern wing of the party withdrew and nominated John C. Breckenridge upon a platform declaring unequivocally for State rights. Of course there could be but one result, and the Democratic party was thus relegated to the minority for a quarter of a century; but together Douglas and Breckenridge overwhelmed Lincoln in every Southern State, and had fair majorities over him in enough of the Northern States to have given either of the Democrats a very large preponderance in the electoral college.

The other occasion was when Grant ran the second time and they had been out of place half their probation, in 1872; they had an opportunity to win then and by giving Horace Greeley their united vote would have done so; but again the half loaf was rejected and Charles O'Connor, of New York, was put up as a "straight" Democrat, which of course gave Grant a walk-over, not because O'Connor polled so many votes as that fully one-third of the Democratic voters, seeing their cause was hopeless, did not vote at all or complimented some personal preference by voting for him.

It is the contemplation of such things as the foregoing that causes the great bulk of the Democratic party to accept what seems inevitable now and to look with marked disfavor upon anything having even the slightest tendency to disturb the even tenor of things as they are going. Hence, they will not be slow to say that had Governor Hill's plan succeeded at Albany it would have been a great mistake. He is young yet, quite vigorous, is making a good record as chief magistrate of a State which is larger in population and wealth than a majority of the nations, and he can certainly afford to wait for promotion four years longer.

DEFECTS IN THE SCHOOL BILL.

ONE of the strongest objections urged against the present school law is the uncertainty regarding its meaning, resulting from the ambiguous and incomplete manner in which it was framed. Any measure designed to amend or supersede that law should have in view the correction of its numerous and serious defects in this respect. But the new school bill introduced last Monday by the House committee on education, instead of correcting the defects of construction existing in the old law, makes matters worse, if that were possible. Its very first section is fraught with an amount of uncertainty and confusion sufficient to constitute a very serious objection to the bill as a whole, unless the defect can be remedied. We reproduce the section:

"That each county of the Territory of Utah shall constitute in law one county school district, and that all provisions of the laws of the Territory now in force, applicable to school districts and to counties as school districts, shall, unless superseded by or inconsistent with this act, apply to the county school district."

When it is remembered that this bill undertakes to provide a new school system for the Territory, this section is seriously objectionable. Suppose the bill in its present form were a law today, what means would the taxpayers and school officials of the Territory have of knowing what fragments of former laws relating to schools were still in force? How could it be ascertained what provisions had or had not been repealed? After all that our Territory has suffered from the "lightning-splintered" condition of its laws, such a deliberate effort to make confusion worse confounded as this section is, should be promptly nullified.

The repealing section of the bill is open to objections similar to those stated in reference to the first section. It reads as follows:

"SEC. 18. That sections 1, 3, 4, 5, 6, 18, 19, 20, 21, and such other portions of the act of which this act is amendatory, and so much of all other laws of the Territory, general and local, as may be inconsistent with this act, or any of its provisions, are hereby repealed."

Such a repealing clause should never be attached to any bill. It is almost inevitably provocative of confusion and litigation. A repealing clause should be so framed as to remove all possible doubt as to what provisions were intended to be repealed.

Section two of the bill is open to the serious objection of being unconstitutional in one of its provisions, namely:

"That power to consider, determine, and execute all matters pertaining to the interests of public school education in each county school district, and in the several sub-districts thereof, except such powers as are herein distinctly conferred upon the local trustees, is vested in a board of education, to consist of five members."

Inevitably questions of a judicial nature would sometimes arise in connection with school matters, such as the legality of a tax, the eligibility of school officers and teachers, the meaning and effect of provisions of the school law, etc. The power "to consider, determine and execute" any matter or question of a judicial nature cannot be conferred by the Utah Legislature upon any person, board, or officer, except the courts provided for in the laws of Congress relating to the Territory. No attempt will be made by any lawyer to controvert this proposition, as it has been repeatedly affirmed by judicial decisions.

There are other defects in the bill which, though easily remedied, will be likely to produce uncertainty and trouble if not removed. We will refer to a few of them: Section three provides for an auditor, assessor, collector and treasurer, but singularly enough not a word is said in the entire bill by way of specifying the duties, powers and responsibilities of those officers, or either of them. Section seven provides for filling vacancies in the board of education, but does not specify how vacancies may occur, as by resignation, removal, etc. Section twelve provides that any member of the board of education for the county may preside at a sub-district school meeting, but that if none be present, the trustee of the sub-district may preside. Suppose he is not present, what then? To avoid school meeting squabbles this point should be fully covered.

The proviso appended to section fourteen, relating to the vital matter of taxation is ambiguous and uncertain to a degree which demands amendment. We reproduce it:

"*Provided*, That no such school tax, in any year, exceed one-half of one per cent. for general school purposes; one-half of one per cent. for the erection of any intermediate or high school building and the purchase of grounds therefor; nor more than two per cent. on the taxable property of any sub-district for erecting a school building therein, or purchasing grounds therefor."

Is it the design that the taxpayers of any part of any county may be required to pay school taxes aggregating three per cent. in one year, or is the limit designed to be fixed at two per cent? A three per cent. tax for school purposes alone in one year is a serious burden, certain to be resisted unless the language authorizing it shall be so explicit as to be beyond question.

It is not our purpose to antagonize the main objects of this bill; on the contrary, we are disposed to favor the school system which it contemplates. But there has been in our Territory so much confusion, disputation and litigation, caused by the careless, ambiguous and incomplete manner in which the school laws have been framed, that any measure which adds to, rather than cures the trouble, ought to be opposed.

What is required is a complete school code, drawn with care, and embracing in one statute all provisions in force relating to schools. This code should be so clear and explicit in its language and provisions that the common people, who are oftener and more directly affected by the school laws than almost any others upon the statute book, can read and understand it for themselves. For such a code the bill under consideration would serve as an excellent foundation. The labor of amending it and making it more complete would not be great, and the house would do well to refer it back to the committee on education with instructions to remedy its defects and embrace within it all existing provisions relating to district schools or a clause repealing all of them not included in it.

FURTHER DEFECTS.

IN addition to the defects in the new school bill which we pointed out yesterday, there are some others to which attention should be directed. For the purpose of so doing we reproduce section fifteen:

"SEC. 15. Whenever it shall seem to the board of education, that a majority of the legal voters in the county school district favor free tuition in the district thereof, then the board shall make an estimate of the approximate cost necessary to establish such free schools in the district for one year, and shall publish the same as a note of proposition to raise the amount of such estimate by taxation in some newspaper or newspapers in the county having general circulation therein, by at least three insertions, and also, by posting the notice in some public place in each sub-district at least twenty days before the general election at which it shall be submitted to vote; and such notice shall distinctly state the rate per cent of taxation proposed for the purpose described; and at the next general election, each legal voter may vote for or against the tax. If it shall be found that a majority of the votes so cast shall be in favor of said tax, then the county court on application of the said board of education, shall cause to be assessed and collected the amount so required."

This section is unjust, in that it gives to legal voters rather than to property taxpayers resident in the county, the power to levy a tax for free schools. The justice of the present law, which allows the bearers of the burden to determine whether or not it shall be imposed, is highly commendable, and should be imitated in this bill. The wording of this section leaves open the old and oft mooted question in this Territory, What is a legal voter? Does the phrase mean a man who is registered, or does it mean a man who has the right to register, without regard to whether his name is on the list or not?

The wisdom of omitting to fix in the bill, a limit to the rate beyond which a tax may not be levied, is questionable. It will be observed that the estimate of the cost of free schools in a county is to be made by the board of education, and the tax proposed must be high enough to produce a fund equal to that estimate. It would be no more than a judicious guard against overestimates and extravagance to fix a limit to the tax for free schools.

To the extent to which this section provides for local option in regard to free schools, it is democratic and commendable. But some of our taxpayers think it should go a step farther in this direction and extend this local option, not only to the county as a whole, but to each district.

The method of giving notice to the public as a "note of proposition to raise the amount of such estimate," is either ambiguous or impracticable. It is to be done by publication "in some newspaper or newspapers in the county, having general circulation therein," etc. By "newspaper or newspapers in the county," are we to understand that they must be journals that are published in the county? This seems to be the meaning of the language, and if so it would be impossible in a number of the counties to give the necessary legal notice, unless a newspaper should be established within its lines for the express purpose, there being no publications of that class in existence in them at present. If such is not the meaning of the section on this point, what then does it mean? It does not appear to refer to newspapers outside of the county.

Section thirteen of the bill, as at present framed, is open to serious question, both on the ground of public policy and of constitutionality. We append it:

"SEC. 13. The board of education shall determine the grade of intermediate and high schools, and as soon as necessary and practicable, establish one or more such schools at locations in the county the most available and eligible, and most convenient to the pupils of the section of the county they shall be designed to accommodate; which schools shall form part of the Territorial district school system, and be entitled to all rights, privileges, and benefactions appertaining to district schools under the law.

Whenever it shall be necessary to erect and furnish school buildings for the accommodation of the intermediate and high schools aforesaid, the board of education shall prepare plans and specifications of the buildings proposed to be erected with an estimate of the approximate cost thereof, including grounds, buildings and furnishings, and submit the same to the county court for assessment and collection."

Under this section, the board of education would have power to elect locations for an indefinite number of buildings, and used for intermediate and high schools. No limit to their cost is fixed, nor are any conditions laid down to guide the board in locating them. To illustrate: It might decide to have one at Draper, another at Union, another at Mill Creek, etc., until half a dozen sites should be selected, and all of them might be outside of this city. The county court is required to cause to be levied and collected, on the taxable property of the whole county, a tax for the erection of these buildings, and as Salt Lake City pays the bulk of the taxes of the county, it might happen that this city would be paying for school buildings erected for the exclusive benefit of other localities.

It is an elementary principle that the validity of a tax depends upon its equalness in regard to its burdens and benefits, and a court of equity will enjoin the collection of one which is obviously unequal in these respects. Some years ago, in a case which arose in this city, in which the collection of a school tax was resisted, a decision to the above effect was rendered. Would a tax on property in this city for the purpose of erecting a school house at Draper, be equal in its burdens and benefits? Is it sound public policy to give to a board of five persons such autocratic powers in dictating taxes?

The bill provides for the levying and collecting of taxes for various school purposes, but fails to provide necessary machinery for disbursing the funds and applying them to the purposes for which they were designed. It does not specify whether the erection of school buildings shall be let to the lowest bidders, or by contract at the pleasure of the board of education, though the latter is the inference, as the powers of that board are made very great. If the latter is the intent of the bill, some protection against jobbery should be avoided.

The House committee on education has not won prestige by introducing a bill so imperfectly framed as is the one fathered by it and designed to revolutionize the school system of the Territory. While the obvious intent of the measure is in the main good, radical changes will be required in its verbal construction before it will be in a suitable condition for record upon the statute book.

DEBATE ON THE APPOINTING POWER.

UP to yesterday afternoon no incident, event or debate had occurred to indicate that in the House there existed any division among members regarding important political questions. A spectator of the proceedings would have found it impossible to learn from them which were People's and which were Liberal members. It is but truth and justice to say that the representatives of both of the political parties of the Territory have worked together disinterestedly and for the public good, each being apparently dictated by his convictions of what the public good required. Not a party vote has yet been taken in the House.

But an amendment to the reform school bill offered yesterday afternoon by Mr. Allen, the Liberal member from Tintic, led to a debate which promised to result in a party vote and the raising of issues which will be likely to mar the smoothness that has hitherto characterized the labors of the Assembly, and the relations between it and the Executive. In its present form section two of the reform school bill provides that the board of directors of the institution shall consist of the governor, auditor and five other persons to be elected by the Assembly. Mr. Allen's amendment provided that these five persons should be nominated by, and with the consent of the Council, appointed by the Governor.

Although a motion made by Mr. Hoge, to defer consideration of the amendment until today, in order to allow preparation for the debate upon it, was lost when put to a vote, the House quickly changed its mind, and after several People's members had expressed a wish to have the merits of the question raised by the amendments fully discussed, the Speaker suggested that, though the House had by voting down Mr. Hoge's motion to postpone, refused to do so, yet, if no objection were made, the matter could be informally laid aside until today, which was done.

Before this point was reached, however, several speeches were made on the amendment. Mr. Allen urged that it would detract nothing from the dignity of the Assembly to concede to the Governor the right to appoint the five directors, that such was his legal right under section seven of the Organic Act, and that, "In order to avoid trouble with the Governor," the Assembly would do well to adopt the amendment.

Mr. Thurman made an excellent argument, showing that such territorial officers as would obviously be necessary to the form of government provided for by the Organic Act, the mode of constituting which was not therein specified, might, with some show of reason, be held to be appointive by the Governor; but that directors of public institutions not contemplated in the Organic Act, commissioners, boards, and such like officers, whom the Legislature might from time to time provide for or abolish, did not come within the appointing prerogative of the Governor.

Mr. King quoted a Wisconsin decision which, he stated, was directly and singularly applicable to the situation in Utah. It arose in a case precisely similar to those which have heretofore arisen in this Territory, relative to the Governor's appointing power, at a time when Wisconsin was a Territory, having a provision in her organic law essentially identical with the section of the Organic Act of this Territory under which the present question had been raised. The decision was adverse to the Governor, and was a strong precedent, appropriate to be followed here.

Mr. Moyle made an excellent argument based upon fundamental principles of democratic free government. He showed how palpable was the duty of legislative bodies to avoid centralizing power when it might as easily be left in the hands of the people, or their representatives. He urged his belief that His Excellency Governor West would recognize the necessity of preserving this principle of free government, and not insist on autocratic powers which were not conferred upon him by the laws of Congress.

As a consistent Democrat, an opponent of centralization and a believer in local self government and the liberties of the people, Governor West cannot but take the position suggested by Mr. Moyle. No reasonable construction of the law can give him the right to appoint such officers as the directors of the reform school. They are not public officers in a sense contemplated by the clause of the Organic Act conferring appointing power upon the Executive.

For reasons similar to those which led Democratic statesmen to protest against surrenders by Congress of power coveted by administrations whose object was centralization, the people of Utah have a right to expect that their representatives in the Legislature will insist on retaining in their behalf what limited rights and privileges are vouchsafed to the masses under a territorial form of government, protecting the same against encroachments not clearly justified by law.

A STRONG REPLY.

IN the United States Senate yesterday, Senator Kenna, of West Virginia, made a vigorous, lengthy and able reply to Senator Sherman's effort of a few weeks ago on the tariff and surplus, in which the latter criticized the President without stint and tried to make it appear that his (the President's) course was not only unrepublican and altogether improper, but entirely out of the line of precedents established by such Democratic Presidents as Jefferson and Jackson. Kenna replied categorically and analytically, bringing the light of recorded facts to bear upon the situation and showing thereby that both the illustrious gentlemen referred to viewed with alarm a great surplus in the national treasury and entertained as well as disseminated such views with reference to the tariff and revenue as had they flourished today instead of in the past would have caused them to be denounced as President Cleveland has been, as free traders.

From the imperfect synopsis furnished by the Associated Press, it looks as though Senator Kenna's effort must rank as the ablest of the session. It seems to have been prepared with special reference to the defense of his chief in the conduct of the government, and while it contains all the subtlety of reasoning peculiar to a thoroughly trained and gifted legal practitioner, is also fertile in research and comparison, so that all classes may understand [illegible]