

DESERET NEWS

WEEKLY.

TRUTH AND LIBERTY.

WEDNESDAY, - SEPT. 4, 1878.

THE TOOEE CASE.

THIS morning, his honor Chief Justice Schaeffer, gave his decision in the Tooee mandamus case, in favor of the plaintiff. His written opinion will be found in another column. Whatever faults may be found with Judge Schaeffer, he has one merit which distinguishes him from several of his predecessors. He speaks to the point, so that all who hear him may understand, and he refrains from inflicting upon the public such masses of verbiage as used to be ground out of the District Court mill in the days of McKean, Hawley and other now defunct opinion factors.

The Judge could have reached no other conclusions than those he has expressed, after a careful hearing of the case. The points he presents are plain to all critical readers of the election law. The County Clerk is under obligations, in company with one or more of the selectmen, to break the seal of the returns and canvass the same. Neither he nor the County Court are constituted a judicial authority to pass on the legality of a law, nor on the regularity of the returns of the election until they have been properly canvassed, and then only on such as may affect the result of the election of any candidate.

But, as we have heretofore shown, this vexatious proceeding is only part of a conspiracy entered into by the "Liberal" officials and others of Tooele County, for the purpose of holding on to offices to which the people have not elected them. The peremptory mandamus will now issue, and the canvass must be proceeded with, as the County Clerk and contumacious selectmen might have known in the beginning.

And now comes the necessity again of watchfulness on the part of the People's representatives. Their unprincipled opponents have shown their determination if possible to defeat the will of the People expressed at the polls. They have proven in past years to what lengths they will go to seize by fraud that which they can not obtain by fair means. And close scrutiny, untiring watchfulness and prompt detection of trickery will now be required to ensure the triumph that belongs to the victory achieved by the ballot.

It is well known by both parties that leaving out all considerations of illegal votes cast by the "Liberals," and of legal People's votes refused by "Liberal" judges of election, the People have a clear majority of at least 300. Let the count proceed, fairly, and the result be declared, truthfully; and if any attempt is made to falsify returns or in any way to cheat the People out of their just and lawful verdict, let every illegal act be noted and substantiated by ample proof, and then let those who would rob the great majority of the citizens of their civil rights be prosecuted and punished under the criminal law. Stealing an office is more infamous than common larceny, and the penalty should be adequate to the offense.

What further steps the "Liberal" ex-officials will take does not yet appear. But one thing should be determined on by the People; that is, that not a dollar of the costs incurred in this attempt to defraud the bulk of the citizens shall be used at their expense. If the defeated minority have any common sense left, to say nothing of wisdom, they will proceed with the count without further obstruction, and submit to the inevitable and the voice of the great majority.

APPLICATION OF SCHOOL FUNDS.

WE received, this morning, the following communication, which we deem of sufficient importance to warrant a detailed reply:

SALT LAKE CITY,
August 28th, 1878.

Editors Deseret News:

Could you conveniently find space in an early issue to answer the following questions:

First—Can the appropriation made by the Legislature for the payment of school teachers, be applied for any other purpose, such as liquidating debts on school buildings, procuring fuel, lights, etc.

Secondly—Must the trustees of a school district, disburse annually the amount received by them from said appropriation, or may they allow it to accumulate at their discretion?

Thirdly—If the appropriation consists of Territorial scrip, may not the trustees realize cash by the sale thereof, either at a discount, par or premium?

Fourthly—Has a teacher the right to ask that the appropriation form part of his salary, he deducting from the regular fees charged for pupils, an amount, *per capita*, equal in the aggregate to the amount of the appropriation received by him?

Hoping to receive a reply, I am, &c. ALPHA.

The laws which bear upon the questions propounded by "Alpha," are, we should have supposed, sufficiently plain for the guidance of school trustees without any explanation of ours. But as lawyers and even Courts often differ in regard to the construction and meaning of the law, it is not to be wondered at that ordinary persons see the same thing in different lights, and we therefore answer, as requested.

First—The trustees are not authorized to apply the money designated for the payment of school teachers to any other purpose. Under the school law of '76 the sum of twenty thousand dollars was appropriated, annually, for the use of the district schools in the Territory, "to be drawn on the orders of the Territorial Superintendent of district schools in favor of the treasurer of each county, according to the school population thereof." The proportion for each school district was to be drawn by the trustees on the orders of the county superintendent, and the law specifies that "said moneys shall be used by the trustees in paying school teachers, according to the average daily attendance of pupils." No other purpose being mentioned, it is clear that the trustees cannot lawfully appropriate the funds thus drawn to any object except the payment of teachers.

There are, however, sundry expenses to be met in the district schools, such as providing fuel, seats and other school appurtenances. These, under the same law, were to be met by a tax of one-fourth of one per cent., which the trustees were authorized to levy on all taxable property in their respective districts, without calling any meeting of the taxpayers. For building and repairing school-houses and other school purposes, which could not be met with the compulsory tax, an amount not to exceed three per cent. was authorized, on a two-thirds vote of the qualified voters present at a school meeting called for the purpose.

But at the last session of the Legislature a change was made in the law. The compulsory tax clause was repealed, and also the provision for the annual appropriation of twenty thousand dollars. But a tax of three mills on the dollar was imposed on all taxable property in the Territory, to be collected by the County Collectors, and appropriated as provided in the old law for the disbursement of the twenty thousand dollars. Under the new law, then, as well as the old, trustees have no right to use the amount drawn from the county treasury on the orders of the county superintendent, for any other purpose whatever than the payment of school teachers.

The question may be asked, How then are the common contingent expenses of schools to be met by the trustees? We answer, By the proceeds of the tax which they are authorized to collect, after a two-thirds vote has been obtained at a school meeting, as before explained. Any rate up to three per cent. may be so agreed upon, and used by the trustees for any school purposes that may be necessary or expedient.

Second—The amount received by the trustees for the teachers must

be disbursed annually, and not be allowed to accumulate at their discretion. If our legislators had contemplated a biennial or triennial disbursement, they would have required only a biennial or triennial tax. Trustees receive the amount specially to pay to the teachers, not to use otherwise, or keep in disuse, or put out at interest. If not devoted to the purpose designed, in the season thereof, the object of the law is measurably defeated and an injustice inflicted upon the teacher from whom it is withheld and the parents of his pupils. The teacher expects a definite amount of his pay in cash without the trouble of collecting in small amounts, and the pupils' parents expect to pay only their proportion of the sum necessary for the teacher's salary, minus the amount of the appropriation.

Third—There is nothing in the law to hinder the trustees from making the best disposition possible of the Auditor's Warrants they receive, when there is no cash in the Treasury. We believe it is the general practice to turn them into cash at the highest market figure, and pay the cash to the teachers. If a teacher is hired at so much per month or quarter, or at a certain amount per scholar, it would be clearly unjust to pay him in scrip at par when the paper is at a discount in the market. The loss in such case would fall on one man instead of the whole district, and would be a violation of contract.

Fourth—A teacher certainly has the right to ask for the money appropriated by law for his benefit, and to know before he commences to teach, how much it will be, so that he may be able to determine upon the amount necessary to charge for each scholar, in order to make up the sum of his salary. The intent of the law is to encourage teachers and to lighten the burdens of parents with large families, and thus promote the cause of education. If the tax money in a given district amounts to one-half of the teachers' salary, the fee *per capita* will only be one-half of the usual sum paid by the parents. The law is as big a step perhaps as is prudent towards free schools by taxation, and proves of great relief to the poor and those who have large families. It is also of much benefit to teachers, particularly in districts where their pay has to be received measurably in produce, because it insures them a stipulated amount in cash.

The trustees, generally, are anxious to promote the cause of education. Their office is often an unthankful one, and they usually work with little or no remuneration. We think there are few of them, if any, who would attempt to subvert the objects of the school law, or do anything to make the path of the school teacher any more thorny than it ordinarily happens to be. And we hope that if any of them have erred in this matter they will now come to understanding, and if they have murmured they will learn sound doctrine, and be anxious to comply with the law in its letter and in its spirit. Is "Alpha" satisfied?

(From Thursdays Daily, Aug. 29)

THE FIRST ANNIVERSARY.

It is just one year to-day, at 4 p.m., since our beloved President, Brigham Young, departed this life for a wider and brighter sphere beyond the veil. We recall his pleasant smile, his friendly grip, his noble countenance, his spiritual force and his extraordinary powers of government and direction. He was a great man in every sense of the term, and posterity will do him justice. The effects of his wise counsel, strong will and undaunted perseverance are exhibited in every part of this Territory, and manifested in the order, unity and peace which distinguish the Latter-day Saints who have colonized this whilom desert. He finished his grand work under divine inspiration, and departing left it in such condition that it could be continued without hindrance or cessation. And among the spirits of the just he now shines as one of the mighty, freed from the trials, pains and sorrows of this sphere of probation.

His absence proves to the world the truth that he himself declared when in the flesh, that what the world call "Mormonism" does not depend on any man. It still lives,

moves, grows and wields its influence for the progress and salvation of humanity. The Temples rise, the ordinances are administered, the dead rejoice in the vicarious works of the living Saints, the gospel is preached, the gathering goes on, the priesthood is magnified in its presiding power, the Twelve stand in their place, and Zion grows and prospers, while the spirit of the heavens whispers hope and nourishes faith in the hearts of the people of God, and we all are confirmed in the knowledge that no matter who stays or who departs, the Eternal Father is at the helm, and He will overrule all things for the good of those who put their trust in Him.

A NOVEL BUT JUST DECISION.

THE Supreme Court of North Carolina recently rendered a decision which we consider forms a good precedent for other courts. A new trial was demanded by a defendant who had been vehemently assailed by counsel for the plaintiff, and his personal character blackened and punctured after the fashion which has become increasingly common. The court held that "where the judge permitted the plaintiff's counsel in a civil case to wantonly berate and vilify a defendant, in his speech to the jury, it was sufficient ground to give the defendant a new trial."

This, we believe is something new in American jurisprudence, but it will be conceded by almost every person who has attended the courts or read the reports of the trial of causes, civil and criminal, that something ought to be done to check the personal attacks in which attorneys frequently indulge.

Even in a criminal trial, the lawyers pleading pro. and con. have no right to hurl opprobrious epithets at the prisoner, nor take advantage of the protection afforded by their position to blackguard and ridicule prosecutors or witnesses. And in civil trials there is even less excuse for such a course, for passion should be entirely excluded, and only law, evidence and sound argument should bear sway.

The practice of personally attacking individuals in court who have no opportunity of defence against the billingsgate of practiced special pleaders, is cowardly as well as infamous, and is beneath the dignity of a respectable member of the bar. We think that when a jury has been evidently influenced by such unfair and improper means, the outraged and defeated defendant should have the protection and justice of a new trial, and we therefore applaud the novel decision of the North Carolina Court.

ANOTHER ELECTION.

ON Tuesday, November 5th, of the present year, an election will be held in this Territory, for Delegate to the Congress of the United States, as provided by both Territorial and Congressional law. No person can vote at this election whose name is not found upon the Registry List of the precinct in which he or she resides. This is a matter to which we desire to call attention.

At the recent general election quite a number of citizens were unable to vote. Some who possessed every other necessary legal qualification failed to be registered, and their votes were lost in consequence. Others, whose names had been registered, were not permitted to vote because, through inadvertence, their names were not copied from the affidavit sheets to the Register List. We hope neither of these causes of ineligibility will exist at the November election.

The law requires the assessor in each county, in person or by deputy, during the week commencing on the second Monday in September, of the present year, to enter upon the Registry List the names of voters that may have been omitted, on such voters' appearing and making the necessary affidavit. That time is approaching, and every citizen, male and female who shall have resided in the Territory six months, and in the precinct one month, previous to the 9th of September, should make it certain that they are properly registered, and when the Registry Lists are posted up—which they

should be in each precinct polling place, fifteen days previous to the election—be sure that their names appear thereon.

This being secured it is the duty of every qualified voter to exercise the elective franchise on the day appointed, and show a proper appreciation of the rights conferred by legislative enactment. We hope to see a far bigger vote in November than was polled in August, 1878.

EDITORIAL NOTES.

The "Liberal" ex-officials of Tooele County intend to fight for the places the people do not want them to fill. Well, they are only making a bigger rod for their own backs, as they will find out in the sequel.

The Sacramento *Record-Union* had news on the 27th inst. of the arrest of Tom Lawton, the accomplice of Troy Dye, six miles east of Galt. Deputy Sheriff Stevenson had gone to bring him in to Sacramento.

Peru is still anxious for coolie labor. Cannot the California Chinese be induced to migrate to the mountains of Peru, where silver and copper exist in abundance? Peru wants them, California does not, and the former place offers by far the greater material inducements.

Dr. E. de Pressense, late member of the French Assembly at Versailles, will give the French view of the political, social, and ecclesiastical situation in Europe and the verdict of the Congress at Berlin, in the September-October number of the *International Review*. Aside from his personal qualification as a writer and student of political history, the view from this standpoint has not before been presented, and possesses great general interest.

The N. Y. *Sun* says: The gross earnings of the Central Pacific railroad for the present year will be, it is estimated, in the neighborhood of \$15,000,000, of which about \$8,000,000 will be net profit. The gross earnings have been as high as \$17,000,000, with a net profit of \$9,000,000—about 52 per cent. The Chicago and Northwestern Railway, which is a well-paying road, does not get a profit of \$2,000,000 out of the gross receipts, amounting to \$14,000,000. And still the Central Pacific has just increased its freight rates.

The physical superiority of the ancients over the men of modern times, at one time conceded, but lately disputed frequently and vehemently, is clearly established in the case of the Greeks. Xenophon's military statistics show that the complete accoutrements of the soldier ready for active service weighed, ordinarily, seventy-five pounds, and when the tools with which he was furnished and his rations were added, the aggregate would reach about a hundred pounds. This load was frequently carried twelve hours per diem, at a speed of four miles per hour. In order to pass the military examination a recruit had to jump his own height, vertically, and three times his own length, horizontally, and in full armor, two-thirds of those distances; also to pitch a weight equal to one-third of his own a distance of twenty yards, besides performing other feats that no ordinary modern soldier could attempt with any hope of success. What Greek of the nineteenth century is equal to such tasks?

A wealthy and well-born lady in London, recently made the eyes of a police magistrate fairly bulge in his head a short time since. The lady appeared as a witness in a case of larceny, in which two men were accused of stealing some silk. She refused to take the customary oath, and also to answer questions as to her belief in a Supreme Being. It transpired that she was a skeptic, but believed it to be an individual and social wrong to tell a lie. When asked if she believed in a future state, she replied that she knew nothing about the future. Finally, the magistrate was compelled to receive her "declaration," which is allowed in such cases by law. The lady was unfortunate in having no religious faith, but she was probably, at least, as honest as the magistrate, notwithstanding, and he was clearly outside of his duty in questioning her upon her belief or disbelief. Religious faith is a matter with which courts have nothing to do, and witnesses are not required by law, or any other obligation, to answer, when such questions are propounded.