

THE DESERET WEEKLY,

PUBLISHED BY
THE DESERET NEWS COMPANY.
SALT LAKE CITY, UTAH.

SUBSCRIPTION RATES:
Per Year, of Fifty-two Numbers, . . . \$2.50
Per Volume, of Twenty-six Numbers, . . . 1.50
IN ADVANCE.

CHARLES W. PENROSE, EDITOR.

Saturday, . . . April 25, 1891.

IRRIGATION DIFFICULTIES.

WE HAVE received some complaints from land owners in Weber County who are owners of water rights in the Hooper irrigating canal. They submit a statement of facts and urgently request our opinion as to the legality of certain alleged proceedings.

The Hooper Irrigation Company was organized about twenty-three years ago under the laws of the Territory, and, as we understand, has not been incorporated. The provisions of the law have been observed hitherto and an annual tax for improvements and the general expenses of the company has been levied on all the lands benefited by the canal. This tax is made by law a lien, not upon the land, but upon the interest of the taxpayer in the canal and his right to the use of the water flowing therein. The tax is levied by the landholders in the district, by a majority vote, at a meeting in December of each year, notice of which must be given at least ten days preceding.

It appears that at the annual meeting of the company held last December, the manner of levying the tax was changed. Instead of assessing the lands to be benefited by the canal and its ditches, the water right to one acre was changed to one share of ten dollars. Then an assessment of sixty-five cents per share was made on all the capital stock thus created, and payment was required by the 1st day of April, 1891, with the proviso that if the assessment was not thus paid the stock of the delinquent would be sold on the 30th of April.

It is complained that this is a radical departure from the system authorized by law; that no notice of the contemplated change was given to the landowners; that lands not benefited by the ditch are assessed by this new plan, and thus an injustice is done to the owners of such lands; and that the whole movement is illegal.

If the facts are as stated, we are of the opinion that the tax cannot be legally collected; that the sale of alleged stock will not take away any

right which the landowner may have in the canal, nor convey to the purchaser any property in the canal or right to the use of its waters. It is very clear that the law contemplates a tax only upon the lands to be benefited by the canal, and that it is to be estimated by the acreage thus benefited, and not by so many shares of capital stock. This is to be seen in Sections Three and Four of the Act under which the company was organized—Compiled Laws, 1888, Vol. ii, p. 48. They relate to the first meeting of the company, it is true, but Section Fifteen, which provides for all subsequent meetings, says the tax may be levied "upon the lands benefited, the landholders in the district to vote upon the same in the manner hereinbefore provided by law."

It will perhaps be contended that the landholders in regular meeting have the power to change all this. But even if that be admitted, it must be clear to every reasonable mind that no such radical change could be legally effected without due notice of such contemplated change to all the landholders of the irrigation district, so that they might have the opportunity of voting upon that important question. If no such notice was given, we believe the action of the meeting, so far as it changed the manner of levying and assessing the tax, will not hold good, no matter how many voted for it.

The new method may be the better plan. We do not pretend to decide as to that. It may have been adopted to cure a defect in the old system. But the whole aim of the law under which unincorporated irrigation districts and companies can be organized, was directed to making the lands benefited, and them only, the basis on which a tax for water service could be levied.

It is quite likely that nothing but a suit at law will decide this question definitely. An injunction against the trustees to prevent their selling water rights of a landholder who refuses to pay the tax thus illegally levied, would perhaps be the most direct way to settle it. We are of the opinion that the decision would be against the trustees, because they have no powers but those given by law, and the law emphatically states, repeatedly, that "the lands benefited" are those that may be taxed.

But cannot the trustees and the complaining parties meet and in a reasonable and friendly way decide this dispute? It would be, better for all concerned not to rush into the courts if right can be done without recourse to this extreme and expensive proceeding. Better not try to collect a tax irregular-

ly levied, than to enter into litigation which will result in a failure to enforce it. The Hooper irrigation people ought to be able to settle this by amicable methods.

A correspondent in another part of the Territory propounds the following questions:

1—If an unincorporated irrigating company draft bylaws for said company and unanimously agree to sustain and place their signatures thereto, can the Law compel *any* and *all* such signers to do according to such bylaws?

2—If such a company make *any* agreement in conformity with the laws of the Territory unanimously sustaining the same, can *any* and *all* such be compelled to do according to such an agreement?

3—If the foregoing questions be answered in the affirmative, what benefit would it be to such a company to incorporate as provided by law, they not wishing to enter into a district incorporation?

These questions are rather vague and we are left somewhat in the dark as to their intent. But we answer to the first two queries, yes, providing the agreements entered into relate to irrigation within the district and the matters provided for in the act of March 13, 1884.

To the third query we answer, we do not know. And we do not understand why we are asked to reply to such a question through the DESERET NEWS. If the land-holders in the district do not want to incorporate, that, it appears to us, is the end of the matter. Nobody can compel them to incorporate, and the provisions of the law which says they may do so, was inserted merely to make it clear that an irrigation company organized under that law were not barred from incorporating under the general incorporation law if they desired to do so. That is all.

THE INTERNATIONAL DIFFERENCE WITH ITALY.

THE reported present aspect of the rupture between the United States and Italy again gives a serious aspect to the subject. It is to the effect that if the latter country does not receive a satisfactory reply from Secretary Blaine, by April 15th, U. S. Minister Porter will be informed by Premier Rudini that his presence in Italy is no longer desired and the Italian legation will be withdrawn from this country.

These actions, should they be taken, usually tread closely upon the heels of a declaration of war. In international complications—when such steps are instituted—on the ground that demands made for reparation by the offended government have not been complied with—the situation is, according to history, followed by an attempt to in-