

with this practice in Nevada City. About a year after the mining district was organized there, the city was incorporated by the legislature, the police judge being designated as "recorder," and his court as the "recorder's court." Under the law at that time, all mining records were kept in the office of the county clerk, a county government having been organized. This, however, the miners did not seem to understand, and seeing the familiar title "recorder" over the door of the judge's office, they wandered in, paid their fees, and left their notices of location. They were urbanely, even cordially, received by the judge, their money pocketed, and their notices duly entered of record in the police docket, among the cases of assault and battery and over-exhilarating drunks. These mining district laws were, to a great extent, based upon local conditions. In some cases they allowed fifty, in some a hundred, and in others two hundred, feet of placer ground to the claim. The feature which interests us in this connection, is their regulation of water rights. This depended entirely upon the nature of the diggings. When the claims lay along the margins of the streams, the laws forbade any one to take water out of the channel; when flats, a short distance back from the stream, were to be worked, especially if there were bar claims in the same vicinity, water was permitted to be taken out, but must be returned; when dry diggings alone constituted the district, the principle of taking water as absolute property was incorporated in the laws. This at once produced a clash of interests where two neighboring districts, with opposing laws, depended upon the same stream for water. A few incidents will illustrate the nature of the difficulty and the character of the remedy usually applied by the aggrieved parties.

In the spring of 1850 a water right

was located on Little Deer creek, near Nevada City, to supply the dry diggings at Phelps' hill, on the north side of the stream. After being used, the water was returned to the stream, thus leaving the miners below an almost unimpaired supply. To be sure, the water was dirty, but that was looked upon as a necessary evil which all miners must submit to, since water could not be used for mining without becoming dirty, and some one must use it first. Not long after this, surface, or *cayote*,* diggings were discovered at Grass valley, the now famous gold quartz district, six miles below the head of the ditch, and on the opposite side of the creek. A company purchased the water right, and changing it to the south side of the stream, constructed a ditch to the new diggings, thus taking the water entirely away from the creek. This left the bed of the stream as dry as a bone for about six months every year. The miners below became indignant at the company's course, and at a public meeting, or miners' meeting, as they were usually called, decided that they were themselves entitled to all the water in the natural channel necessary to work their claims, and that the company could have the surplus, should there be any. Discontent was confined to growlings, until the water began running low in May, and then a delegation of miners went up to the head of the ditch and turned the water down stream. The ditch company then sent men to the scene of the trouble, to turn the water into the ditch again. Sometimes the two parties would meet, and a conflict was only averted because of the superior numbers of the miners, who were generally left in possession. In July, 1856, the ditch owners decided to defend their legal rights by force, and one of their number, Tom Walker,

* So called because holes were dug in the ground and the dirt piled up on the surface, resembling *cayote* holes.