

Two children were shot and killed in Springville, through careless handling of fire arms.—In the Third District Court, Mrs. Bridget Sweeney, convicted of administering poison to her husband, was sentenced to 2½ years' imprisonment.

JUDGE ANDERSON'S DECISION.

At four o'clock on Saturday, March 28th, Judge Anderson rendered his decision in the case of the People ex. rel. vs. the Utah Commission, in which the plaintiffs had made an application for a writ of prohibition restraining the defendant from assuming charge of the school bond election. His Honor read the opinion as follows:

In the District Court of the Third Judicial District in and for the Territory of Utah.

The Board of Education of the city of Salt Lake, on the relation of Richard W. Young, a member of said board, plaintiff, vs. G. L. Godfrey, J. A. McClelland, A. B. Williams, Alvin Saunders, R. S. Robertson, members of and constituting the Utah Commission, defendants.

This is an application by the plaintiff for a writ of prohibition against the defendants, to prohibit them, and each of them, as members of the Utah Commission and as constituting said commission from further publishing a notice for an election to be held on the 30th day of March, 1891, in relation to the issuance of the bonds of the school district of Salt Lake City; and from holding any election pursuant to said notice and from further interfering in the matter of calling or holding said election or receiving the returns thereof.

The application is based upon the affidavit of Richard W. Young, which affidavit is to the effect that the affiant is a member of the Board of Education of Salt Lake City, organized and acting under Chapter Fifteen of the Acts of the Legislature of Utah Territory, approved March 13th, 1890; that on the 14th day of February, 1891, said Board of Education, deeming it advisable, duly resolved to call a meeting, or election, as authorized by section 123 of said act, and submit to a vote of said school district whether bonds of the district to the amount of \$300,000 should be issued and sold for the purpose of purchasing school-house sites and building schoolhouses and supplying them with furniture and apparatus and improving the grounds; that on the 7th day of March, 1891, the president and clerk of the Board of Education were about to publish notices calling such meeting, or election, as prescribed in section 123 of said act, when they were prevented from doing so by the Utah Commission, composed of the above-named defendants.

That said Commission on said day declared its exclusive right to call, conduct and supervise such election and receive the returns thereof, and caused to be issued and published a notice of said election, to be held on March 30, 1891, appointing five voting places in said district instead of one, as provided for in section 124 of said act, designating the hours the polls shall be kept open at said election, and the amount of bonds to be issued, their denomination, time of payment and rate of interest they should bear.

Notice of the application was served on the defendants and they have appeared thereto and filed a demurrer to the application, upon the ground that the affidavit or complaint does not state facts sufficient to constitute a cause of action.

The question presented for determination is whether an election under article fifteen of the school law, passed by the last Legislative Assembly, in a school

district comprising a city of the first class, to determine whether the bonds of such district shall be issued for the purpose mentioned in the act, may be held under the control and supervision of the Board of Education of the district, or whether it must be held under the supervision of the Utah Commission.

Section nine of the act approved March 22, 1882, commonly called the Edmunds act, provides that: "All the registration and election offices of every description in the Territory of Utah are hereby declared vacant, and each and every duty relating to the registration of voters, the conduct of elections, and the receiving or rejection of votes, and the canvassing and returning of the same, and the issuing of certificates or other evidence of election in said Territory, shall, until other provision be made by the Legislative Assembly of said Territory as is hereinafter by this section provided, be performed under the existing laws of the United States and said Territory by proper persons, who shall be appointed to execute such offices and perform such duties by a board of five persons to be appointed by the President, etc."

The foregoing section was continued in force by section 23 of the act of Congress approved March 3, 1887, known as the Edmunds-Tucker law, and is still in full force in this Territory.

Section 124 of the school law of the Territory, in regard to elections in reference to the issuance of bonds, provides that: "The Board of Education shall appoint three judges to conduct the election, and the voting at such meeting shall be by ballot, but no particular form of ballot shall be required; nor shall any informalities in conducting such elections invalidate the same, if the election shall have otherwise been fairly conducted. At such election the ballots shall contain the words 'Bonds, yes,' or 'Bonds, no,' and section 125 of the same act provides that the judges of election shall count and canvass the votes cast and make return thereof to the Board of Education, and that the Board of Education shall, within five days after the election, meet and canvass the returns and certify the result to the clerk of the County Court, and file with such clerk certified copies of the order of the Board of Education ordering the election, and of the notice, etc. The board shall also file a statement with the clerk of the County Court showing the number of inhabitants in the district and the value of the taxable property situated therein and that the amount of the bonds proposed to be issued does not exceed 2 per centum of the value of the taxable property in the district; that the meeting or election was lawfully called and held, and, in short, that everything was done in conformity with the statute, and that such bonds may lawfully be issued, whereupon the board shall be authorized to issue the bonds of the district.

If the meeting, or election, provided for in the school law, to vote for or against the issuance of bonds of the district, is to be deemed an election, there can be no doubt but that the provisions of the school law as to the conduct and return of such elections are in direct conflict with the act of Congress referred to in regard to the conduct of elections in this Territory, and are therefore void; and this much is conceded by counsel for the plaintiff. Counsel for plaintiff, however, contend that the "meeting" of the electors of the district, and the voting by them at such meeting on the question of the issuance of bonds of the district, do not constitute an election within the meaning of the acts of Congress hereinbefore referred to, and therefore these provisions of the school law are not in violation of the acts of Congress.

In Webster's Dictionary the word election is defined to be: First—The act of

choosing; choice; the act of selecting one or more from others. Second—The act of choosing a person to fill an office or employment, by any manifestation of preference, as by ballot, uplifted hands, or viva voce; as, the election of a president or mayor.

In Bouvier's Law Dictionary, vol. 1, p. 581, the word election is defined to be: "Choice, selection. The selection of one man from amongst more to discharge certain duties in a State, corporation or society." "The word in its ordinary significance carries the idea of a vote, and cannot be held the synonym of any other mode of filling a position," 5 Nev., 111. "Election has been construed to mean the act of casting and receiving the ballot—the actual time of voting, not the date of the certificate of election," 54 Ala., 205. In the school law under consideration the words "meeting" and "election" are used as synonymous. In article 5, which defines the qualifications of voters, the word "meeting" occurs sixteen times, the word "elected" twice, and the word "election" fourteen times. In article 15, relating to schools in cities, and under which the "meeting" or "election" under consideration is to be held, the word "elect" occurs twice, the word "elected" eight times, the word "election" thirty-two times, and the word "meeting" seven times, while in the entire statute the word "elect" appears twice, the word "elected" fourteen times, the word "meeting" thirty-three times and the word "election" forty-eight times.

I am of the opinion that where, as in the present case, a statute provides for the taking of the vote of the qualified electors of the district by ballot, whether for the election of school officers or in regard to the issuance of bonds, or upon any other question which may lawfully be submitted to a vote, and where the statute prescribes the qualifications of the voters, provides for judges to receive or reject the ballots offered by those desiring to vote, and who shall "count and canvass the votes cast at such election, and make returns thereof" to a board provided by the statute, which board shall meet within a specified time and canvass such returns and certify the result; and where the statute itself in forty-eight different places designates the taking of said vote at an election, such acts constitute an election in the full meaning of that word.

It follows, therefore, that the sections of the statute providing for the holding of an election under the control and supervision of the Board of Education of a city of the first class are void and of no effect.

It may be further observed that the Legislative Assembly of the Territory exceeded its power in providing in section thirty-seven of the school law that: "Every male person of the age of 21 years or over who has been a resident of the Territory for six months and of the school district for thirty days, both immediately preceding the day on which any meeting is held for the purpose of voting on the question of levying taxes or issuing bonds for any school district, and who has paid a territorial or county school tax in any such district during the preceding year, or who has been assessed for any territorial or county school tax in any such district for the year in which any such meeting is held, shall be entitled to vote at such meeting."

This section authorizes persons to vote without having taken, and who may be unable to take, the oath provided by section twenty-four of the Act of Congress, approved March 3, 1887, commonly known as the Edmunds-Tucker act, and which act provides that the oath therein prescribed shall be taken, "as a condition precedent to his right to register or vote at any election in said Territory."

It is not within the power of the Leg-