

Cooley's Con. Lim., 618.

That no legal voter should be deprived of that privilege by any illegal act of the election authorities is a fundamental principle of law, but in order for such voter to avail himself of that privilege, he must conform to such reasonable rules as are prescribed by law—he must leave nothing undone on his part that he should do in order to bring himself within this rule—he must see that his name is on the registration list, and otherwise entitled to vote. When he has done this he has done all that the statute required in this territory.

In this case it appears that each of these fifteen electors had their names properly enrolled—that they were legal voters and entitled to vote at this election; that the deputy register, without any authority of law whatever, erroneously and illegally ordered their names stricken from the lists of qualified electors on the morning of the election—that each of them went and tendered a vote for the contestant, with an affidavit of their qualifications as legal voters. They were refused because their names had been illegally and erroneously stricken from the list of voters by order of the deputy registrar. This illegal act, if it was such, upon the part of the registration officers cannot be justified upon any pretext whatever.

The rights and wishes of all people are too sacred to be cast aside and nullified by the illegal and wrongful acts of their servants, no matter under what guise or pretense such acts are sought to be justified. This right is a fundamental right. All other rights, civil and political, depend on the free exercise of this one, and any material impairment of it is, to that extent, a subversion of our political system.

These registration and election officers act ministerially, or at most quasi-judicially, and their acts may properly be reviewed and questioned in a proceeding to contest or try the title to any office made elective by the laws of the Territory.

People vs. Pease, 27 N. Y., 45.

Gillford vs. Palmer, 20 Wis., 544.

State vs. Robb., 18 Ind., 536.

5 Cal., 235.

People vs. Vandore, 53 Am. Dec., 69.

Davis vs. McKeedy, 5 Nevada, 369.

23 N. E. Rep., 538.

54 Huron, 567.

Perry vs. Whitaker, 71 N. C., 475.

People vs. Keenney, 21 Am. Rep., 465.

The acts of the Legislature herein quoted can properly be considered in connection with the Edmunds-Tucker act as applicable to this Territory in the registration of electors and conduct of elections, and should be so construed as to give every man, who has that right, an opportunity to register and vote and to have that vote honestly counted. Section nine of the Edmunds-Tucker law declares vacant all registration and election offices of every description in the Territory; and each and every duty relating to the registration of voters and conduct of elections, receiving and registering votes, and the canvassing of the same, etc., shall, until other provisions be made by the Legislature of the Territory, as hereinafter provided, be performed by and under the existing laws of the United States and of said

Territory, by proper persons, appointed by the Utah Commission \* \* \* and no person shall be excluded from the polls who is otherwise eligible to vote, on account of any opinion, etc.,

\* \* \* nor shall they refuse to count any such vote on account of the opinion of the persons casting the same on the subject of polygamy. \* \* \*

The construction of this statute may be found in—

McCary Am. Law of El., Sec. 11;  
6 Am. & Eng. Enc. of Law, p. 292—430;

Murphy vs. Ramsey, 114 U. S. 36, and

Buchanan vs. Manny, 2 Ellis, 287.

Section 2007 of the Revised Statutes, relied upon by counsel for the contestant, might be a potent factor in the determination of this question had not the Supreme Court of the United States declared it unconstitutional in—

92 U. S., p. 214.

U. S. vs. Reese et al.

I am satisfied that no case can be found in the books which presents a stronger appeal in behalf of justice to an elector than is presented by the record in this case. Yet the law seems to be settled that unless the ballot is actually cast it cannot be counted a local election contest. Justice Campbell, in his opinion in *People vs. Cicot*, 16 Mich., 311, says: "There is no case, so far as I have been able to discover under any system of voting by closed ballot, which has held that any account can be taken of rejected votes in a suit to try title for office."

Judge Cooley, in his work on Constitutional Limitations, pp. 625-6-7, says: "We have seen that no evidence is admissible as to how parties intended to vote who were wrongfully prevented or excluded from so doing; such a case is one of many without a remedy, so far as candidates are concerned." And in such cases the injured parties have their right of action against the registration officers who violate their oath and maliciously or corruptly strike the name of a legal voter from the registration list, or maliciously or corruptly refuse to place such names upon the register, and such parties may be made liable to a civil action in damages or prosecuted criminally for such corrupt, wilful and malicious acts. *Ashby vs. White* 2nd Ed. Rapn. 938. *Gilliepie vs. Palmer* 20 Wis. 544-6 Am. and Eng. Enc. of Lar. page 306-308-443. *Hardesty vs. Teft* 87 Am. Dec. 584. *Jenkins vs. Waldson* 11 John 114 54 Am. Dec., 564. *Canfield vs. Bullock* 18 B. Mon. (K. Y.) 494-693.

By Sec. 3752, Compiled laws of 1888, it is enacted that when any election held for an office exercised in and for a county is contested on account of any misconduct on the part of the board of Judges of any precinct election, or any member thereof, the election cannot be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts would change the result as to such office in the remaining vote of county.

Also see Sec. 3751—3753—3761—2762, Comp. Laws, 1888.

It is contended with much reason that under the provisions of these statutes no vote can be counted for a candidate that is not actually cast for him while the polls are open, and that the power of this Court is limited to the

rejection of such fraudulent votes as were actually cast, or to the rejection of the vote of precincts on account of fraud in the officers conducting the election in cases where it appears that the rejection of the vote of such precinct would change the result as to such office in the remaining vote of the county. The full vote of South Cottonwood precinct is not reported or found by the trial Court; therefore we are unable to determine whether or not the rejection of the entire vote of South Cottonwood precinct would change the result of the election for this office; therefore

Upon the whole record we find no errors. The findings and judgment of the Court below are affirmed with costs.

We concur in the result—

ZANE, C. J.

BLACKBURN, J.

THOMAS E. JEREMY.

The funeral service over the remains of Elder Thomas E. Jeremy, conducted by Bishop Kesler, were held in the Sixteenth Ward schoolhouse yesterday (Sunday), April 19th. The gathering was so large that many people were unable to obtain admittance. Directions given by the deceased while in life, in relation to the manner in which he wished his funeral conducted, were read. The details were faithfully fulfilled.

Among those who were present were President Angus M. Cannon and a number of former and present members of the High Council of the Stake, six of the latter attending as honorary pallbearers.

The opening prayer was offered by Elder J. Nicholson. Instructive discourses, embodying eulogistic remarks in relation to the deceased were delivered by Elders George G. Bywater, William White, Bishop Kesler and President Angus M. Cannon. The closing Prayer was offered by Bishop Elias Morris. The ward choir rendered the musical exercises, which were unusually excellent.

The body of Brother Jeremy was followed to the cemetery by a large cortege. At the grave the dedicatory prayer was offered by Elder George B. Wallace.

The following extracts are from Jensen's Biographical Encyclopedia.

Thomas Evans Jeremy was born in the Parish of Llanegwad, Carmarthen-shire, South Wales, July 11, 1815, raised on a farm and received a tolerable good education. After his marriage he joined the Baptist denomination, but believed the principles of "Mormonism" from the time he first heard them proclaimed. March 3, 1846, he was baptized by Elder Dan. Jones, he being one of the first who embraced the fulness of the Gospel in Wales. On the evening of the day of his baptism he was ordained to the office of a Priest, and soon afterwards, when the Llanybyther branch of the Church was organized, he was appointed to preside over the same. By his continued efforts, being assisted also by other Elders, four new branches were raised up in the immediate neighborhood of where he resided.

In 1849, Elder Jeremy emigrated to Utah, with his family, consisting of his wife and seven children and three other persons (one girl and two young men) that he paid for, crossing the Atlantic in