

pelled to defray the expense in hunting him up. Either one or both of these fines may be imposed.

The Court—This matter is serious. If nothing more, the witness has been guilty of infringing upon valuable time of the Court, and he will be required to forfeit his fees and pay the expense incurred in bringing him back, and stand committed until both of such fines are paid.

This witness was recalled to the stand and subjected to severe re-examination.

Mr. Brown—When you were on the stand this morning I enquired if you were acquainted with a man named Pat Messack and you replied that you were not. I now ask you, do you know a man by the name of Pat Merrick?

Witness (hesitatingly)—Yes, sir.

Mr. Brown—I have good reason to believe them to be one and the same person, and I want to know if the man Merrick that you know voted in the name of Pat Merrick.

Witness—No, sir; it was a man that represented himself as Pat Merrick, a stranger, personally, to me.

Mr. Brown (sternly)—There seems to be a good many strangers, personally to you, who voted for men that you once knew, but temporarily had forgotten.

Witness, cross-examined by Judge Loofborough—Mr. Beaver, do you not think it probable, as well as possible, that there was more than one man for each name; that is to say two men bearing the same name for each of the thirteen disputed ballots?

Witness—I think so.

It was here shown that there was one vote cast for Fred Ferguson at the poll at which Mr. Beaver was election judge.

The ballot was produced and Mike Duggan testified: I can identify the ballot in question, because I wrote the name of Fred upon it. I did so because Mr. Ferguson's first name was dimly printed, and not being personally acquainted with the gentleman, but wishing to vote for him, I enquired what his name was and was told it was Fred, and I therefore wrote that name. [Witness here identified his ballot and it was offered as evidence that it should have been counted for plaintiff.]

Mr. Brown—Did you have any conversation with Mr. Beaver on or after election day?

Judge Loofborough—We object, on the ground that the question is irrelevant and leading.

The Court—It seems to be a proper question and necessary to bring out certain evidence. The witness may answer.

Witness—I did, but it was nearly a month after.

James W. Skinner testified: I was one of the election judges at poll 3, Second precinct, this city. At the close of the election I sealed the returns and delivered them in person to the Utah Commission:

The returns were here identified by witness, and on Mr. Brown's request the ballots were counted, Ferguson losing a vote. Originally the count stood: Allen 185, Ferguson 77. The result is now, Allen 186, Ferguson 76.

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Mr. Brown—We must gain what we have lost, at least, and ask for the returns of Bluff Dale Precinct. They were produced in evidence and showed that there had been one vote cast that had not been counted to any one, but had been marked "Ind." in the returns. Mr. Brown said it was their intention to show that this vote should have been counted for Ferguson.

By order of the court the Bluff Dale ballots were counted and showed sixteen for Ferguson and three for Allen. Originally but fifteen votes had been counted for Ferguson.

At the conclusion of the Bluff Dale count, the court adjourned.

The case was resumed November 7th.

Mr. Scott was recalled and testified: I was appointed judge of election by Max Beaver; he was not a justice of the peace, but he administered the oath to me on the morning of election before any votes had been cast. I came from Kentucky; had resided in Bingham about five months previous to the election of August last.

Judge Loofborough asked permission of the court to enter a counter contest, on the ground that illegal votes had been cast and counted for plaintiff.

Mr. Rawlins' made an incisive argument against the granting of this request and cited the laws of California, regarding election contests, of which the laws of this Territory are on that subject an exact counterpart.

Judge Loofborough responded to Mr. Rawlins.

The court took the matter under advisement.

A recess was taken until two p. m.

On reassembling at two o'clock, Judge Anderson ruled that the alleged illegal votes now offered in evidence by the defendant were not admissible for the reason that they were barred by the statute, and that since the August election another election had occurred, the ballot boxes had been used and the votes of many of the precincts destroyed, the use of which would be absolutely necessary to establish the point that some of them were fraudulent.

An exception was entered and the examination of witnesses for the defense was commenced.

J. M. Havey for the defense: He was presiding judge at poll one, precinct two, of Salt Lake City, at the close of the polls on the evening of election it was discovered that there were three more ballots in the box than there were names marked on the poll list as having voted. Could not account for this discrepancy. To rectify the difference, one "Liberal" and one People's party vote was destroyed. One extra vote remained; lots were cast to decide which candidate should lose it. The Liberal candidate lost it; was sure the judges did not put these extra ballots in the box, but they got there all the same.

Albert H. Kelly, another of the judges, testified—I wrote the word "voted" opposite the name of each man who voted; nobody voted twice; have no idea how the extra votes were cast or by whom.

James W. Cahoon: I live at South Cottonwood; did so prior to the August election; was registration officer at that place; I served a number of objections on persons whose names were on the list as voters.

Judge Loofborough offered these protests in evidence to show that a registration officer had power to hear and determine objections to vote.

The Court—Well, suppose that a registrar holds that a man is not entitled to vote, when in fact he really is, what do you think the effect of such a ruling would be?

Judge Loofborough—There would be no way on earth whereby he could get his vote into the ballot box. The court is not vested with power to review the adjudication of the registrar.

The Court—Is there no way in which such an action can be reversed?

Judge Loofborough—None at all.

The Court—You mean by that, that a registration officer is a supreme court all in himself, independent of any other court, and that there is no appeal from his decision, right or wrong?

Judge Loofborough—The Supreme Court has so held.

The Court—I will receive the evidence subject to exception, but it must be plain law in my opinion to make that binding.

The names of persons stricken off the lists by registration officer Cahoon were Jacob H. Tipton, Joseph P. Risley, John Bohn, Haus Hansen, Fred J. Bishop, Hiel G. Bradford, Thomas Burt, Richard Howe, William Turner, Richard Gilbert, John J. Turner, Walter H. Atwood, Roswell Bradford, Benjamin Wright, Miller Christensen, Donnel Simpers, John E. Beunion.

James W. Cahoon recalled and cross-examined.

Mr. Brown—Why did you strike off from the registry list the names of certain voters?

Witness—Because when I asked them if they were members of the "Mormon" Church they told me it was none of my business.

Mr. Brown—What other questions did you ask them?

Witness—I enquired, if they contributed to the defense fund and they told me that was none of my business.

Mr. Brown—So, because they would not tell you what was their private business you struck off their names, did you?

Witness (emphatically)—I did.

Harry Haynes: I acted as presiding judge at the August election at South Cottonwood. The reason why the above named persons were not allowed to vote was that their names were stricken off the lists. They also offered affidavits with their ballots on the second application to vote, but were again refused; there was no authority to reinstate their names.