DESERET EVENING NEWS.

Monday, - March 30, 1891.

Copy for Advertisements which are expected to appear in the Evening News on the day when received should be handed in to the business department not later than 7 p. m.

Rates of Advertising furnished upon application.

Copy for advertisements must be in after 8 a.m.

FRAGMENTS.

A NEW catalogue of the books in the Territorial library has just been issued.

The Territorial Supreme Court will convene on April 1st.

The work of removal to the new position preachers has been going on today.

Commissioner Norrell was engaged this morning trying a civil case.

Hayes' excellent band serenaded the News office this morning on their way round the city.

The trial of William N. Diamond for the murder of Ed. Scott was commenced before Chief Justice Zane this morning.

Charles M. Cannon, who recently graduated from the New York Dental College, returned home from the East today.

Judge Anderson gave his decision in the school bond election case on Saturday afternoon. It will be found in extenso in another column.

The arguments in the Kramer will contest have been submitted to Judge Barich, who was expected to give his decision this afternoon.

Reports come to hand that the Indian burglar is again at his work in Southern Indiana and better see to their locks, bolts and bars.

In the Third District Court on Saturday afternoon, the Hon. P. J. Marchand, of Toledo, Ohio, was admitted to practice at the bar.

The members of the Tabernacle Choir are requested to meet for practice tomorrow (Tuesday) evening, at the Assembly Hall.

The usual monthly meeting of the New quorum of Elders will be held this (Monday) evening, at 7:30 p. m., at the Twenty-Third Ward meetinghouse. E. H. Davis, President.

This afternoon we received a call from Brother John D. T. McAllister, of St. George, who came up from Southern Utah to be present at the funeral of Brother Wilcken and attend Conference.

The opening of the Home Club—Gilbert's Dancing academy—is "A Success" as from Jarvis Section," occurs Friday night. No seats will be sold before Thursday morning.

A petition has been presented to Governor Thomas asking for the pardon of Brook Welch, who is serving a sentence of sixty days in Cache County jail for cruelty to a horse. In addition to the imprisonment there was a fine of $50.

The big dam recently placed in the Virgin River to supply the farms of St. George with water for irrigation purposes is a pronounced success, and the people of Washington are correspondingly jubilant, since all fears of drouth are now practically removed.

A large rim-lock key, with the Dewewood Manufacturing Company's trade mark on, was picked up near the corner of East Temple and Third South street last night. The owner can get it by calling at the City Hall and proving his right of proprietorship.

When Judge Powers finished his address to the jury in the Raymond case on Saturday afternoon there was an outburst of applause among the spectators, Judge Zane became disgusted at this, and commanded immediate silence. One of the attendants, named John Smith, was fined $10 for contempt of court.

At a few minutes before midnight on Saturday James Hogan, a hostler in the employ of Grant Bros., died from the effects of an injury received by being kicked by a wild horse a few days ago. The post-mortem note was about thirty-five years of age and leaves a wife and four small children.

A load of hay was overturned on South Second West Street this morning, caused by the teamster driving the wagon into a chuck-hole, the axle of which was so large as to render it impossible to go around. The driver was a good swimmer and thereby escaped being drowned. The hay was much damaged by the mud.

Prof. Jos. E. Taylor will deliver a lecture in the Fourteenth Ward Assembly Hall, on Tuesday (tomorrow) evening, March 31st, at 7:30 o'clock, before the Mutual Improvement Associations, Subject—"The Sins of the Fathers Visited on the Children." The public are invited and will be made welcome.

Jos. Christensen, President.

On Saturday evening about 8 o'clock a boy named Gibson was thrown from a hobby at the corner of First and M streets and had his leg broken. He was helped on to a street car and taken home. A physician was called and the broken bones were placed in position. At last accounts he was resting easily.

A count vote was cast at the school bond election today. This was probably owing to a misunderstanding on the part of some of the people, a morning paper having published in one edition that there would be an election today, and in another that there would be none. At three o'clock 119 votes had been cast in the Fifth Precinct, ten per cent of which were claimed to be against the issuance of bonds.

Amusements.

The "Kojaba" season opens tonight at the Salt Lake Theatre for three nights. The eastern press says of it that it surpasses all expectations by the magnificence of its scenic effects. The story typifies the battle of good against bad in the guise of spirits. Electra is the good spirit, Beelzebub the bad one. The staging is said to be gorgeous. Beelzebub's cave is the opening scene. It is a pit of darkness, illuminated by intervals with ghastly flames. The baby fairy dancer, Bretton, is said to be a wonder. The French acrobats perform difficult feats.

At "Wonderland" there is an entire change of programme, except the Missouri giantess, who is retained for another week.

Thirteenth Ward Bishopric.

Apostle Heber J. Grant and the Presiding of the Salt Lake Stake of Zion met with the Saints of the Thirteenth Ward, on Sunday evening, March 29, 1891, for the purpose of reorganizing the Bishopric, a vacancy having occurred some time ago through the death of Bishop Miles Atwood.

President Angus M. Cannon, having stated the object of the meeting, nominated Brother Nelson A. Empey, who was unanimously sustained as bishop, with Brothers Hamilton G. Park and George E. Woolley as his Counselors.

Presidents Charles W. Penrose and Joseph E. Taylor each delivered some timely remarks. A good spirit prevailed in the meeting.

It was announced that President Angus M. Cannon would meet with the people in this ward on Sunday evening, April 12th.

SCHOOL BOND ELECTION.

Judge Anderson Decides in Favor of the Utah Commission.

FORMAL NOTICE OF APPEAL GIVEN.

The Question to Go Before the Territorial Supreme Court at the Coming Session.

At four o'clock on Saturday afternoon 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. Godbey, J. A. McKenzie, A. H. 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 putting into a notice for an election to be held on the 30th day of February, 1891, and 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 issued from further interfering in the matter of calling or holding and election or receiving the returns thereof.

The application is based upon the affidavit of Richard W. Young, which affidavit is to the effect that he (affiant) is a member of the Board of Education of Salt Lake City, organized and acting under the Chapter Fifteen of the Acts of the Legislature of Utah Territory, approved March 15th, 1890, that on the 16th day of February, 1891, said Board of Education, deeming it advisable, duly resolved to call a meeting, or election, as contemplated by section 122 of said act, and submit to a vote of said school district whether bonds of the district to the amount of $200,000 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 said Board of Education were about to publish notice calling such meeting, or election, as provided in section 122 of said act, but that 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 meeting and receive the returns thereof, and caused to be issued and published a notice of said election, to be held on March 30, 1891, pointing five voting places in said district instead of one, as provided, for in section 122 of said act, and creating the places 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 facts set out in the complaint do not state facts sufficient to constitute a cause of action.

Section 122 of the act of the Legislative Assembly of the Territory of Utah provides that the board of education in whether an election under article fifteen of the school law, passed by the Utah Legislative Assembly, in a school district comprising any of the five counties to determine whether the bonds of such district shall be issued for the purposes 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, 1884, commonly called the Edmunds-Tucker 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 day relating to the registration of voters, the conducting of elections, and the receiving or rejection of votes, and the canvassing and returning of the votes, shall be exercised and performed by other officers of election in and 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 relation to the issuance of bonds, provides that "The Board of Education shall appoint three judges to conduct the election, who shall have the qualifications of judges of election, and such number of clerks as may be deemed necessary, to be appointed by ballot, but no particular form of ballot shall be required; nor shall any informality 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 elections shall count and canvass the votes cast and make returns thereof to the Board of Education, and section 126 provides that the Board of Education shall, within five days after the election, meet and canvass the returns and certify the result in the office of the County Court, and file with such clerk certified copies of the order of the Board of Education ordering the election and the result thereof, etc. The board shall also file a statement with the clerk of the County Court showing the number of children in the school district and the value of the taxable property within and 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 be such as to be regarded in a manner 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 the Territory, and are therefore void, and the court is compelled to consider the plaintiff's demurrer and for judgment, however, contends that the "meeting" of the electors of the district, and the voting by those at such meeting on the question of the issuance of bonds of the district, do not constitute an election in the meaning of the acts of Congress hereinbefore referred to, and therefore those 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. 565, the word election is defined to be "Choice, selection. The selection of one man from amongst many to discharge certain duties in a state, corporation or society." "Popular sovereignty signifies nothing more than the idea of a vote, and cannot be held the synonym of any other word." Bouvier's Law Dictionary, p. 611 "Election has been construed to mean the act of casting and receiving the ballots of electors in either and under which the "meeting" or "election" under consideration is to be held, the word "election" has two times, the word "election" eight times, while in the entire statute the word "election" appears twice, the word "electors" twelve 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 the votes of the qualified electors of the district, by ballot, upon the question of school bonds, the question is submitted to a vote, and where the statute prescribes the qualifications of the officers of election, judges to receive or reject the ballots offered by those desiring to vote, and who shall receive and count the votes, and make such election, and make returns thereof to a board provided by the statute, which board shall meet at a specified time and canvass such returns and certify the result, and where the statute itself in terms provides for the issuance of the bonds of the school district of Salt Lake City; and from holding any election pursuant to said notice issued from further interfering in the matter of calling or holding and election or receiving the returns thereof.

The application is based upon the affidavit of Richard W. Young, which affidavit is to the effect that he (affiant) is a member of the Board of Education of Salt Lake City, organized and acting under the Chapter Fifteen of the Acts of the Legislature of Utah Territory, approved March 15th, 1890, that on the 16th day of February, 1891, said Board of Education, deeming it advisable, duly resolved to call a meeting, or election, as contemplated by section 122 of said act, and submit to a vote of said school district whether bonds of the district to the amount of $200,000 should be issued and sold for the purpose of purchasing schoolhouse 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 said Board of Education were about to publish notice calling such meeting, or election, as provided in section 122 of said act, but that 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 meeting and receive the returns thereof, and caused to be issued and published a notice of said election, to be held on March 30, 1891, pointing five voting places in said district instead of one, as provided for in section 122 of said act, and creating the places 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 facts set out in the complaint do not state facts sufficient to constitute a cause of action.

Section 122