

where the law has established no specific remedy and where in justice and good government there ought to be one.

In this case an alleged certificate of election had been given to a person not elected—a gross perversion of justice, and though this does not secure the seat in Congress to the holder of the fraudulent paper, it may be used as *prima facie* evidence of election, and, if accepted as such, enable the person holding it to occupy the position to which another has been elected, until the House of Representatives can find time and occasion to pass upon the case. Thus, while there is a remedy so far as the ultimate possession and right to the seat is concerned, there is none in law for the wrong occasioned by the failure of justice in giving the false certificate and in the use of it to gain temporary possession of the seat. Mandamus, then, was the method by which these wrongs could be righted, and the writ asked for was to command the Executive to do that which the law required him to perform, and which he had refused to perform.

If the Court had issued the writ and the Executive had complied with the mandate, the person elected would have a certificate in due form of law as an offset to one not in the form of law. Then either the improper certificate or both would be excluded. In either case the fraudulent Delegate would not be sworn in, and consequently would not occupy the seat either permanently or temporarily. If it be asked why not wait and let the House decide on the merits of the case, the answer will be because this is all that the parties to the conspiracy against popular rights in this Territory have schemed to accomplish. They do not expect to obtain the seat for their candidate, permanently, but they have planned to gain possession of it for the time being, draw the pay, and by pulling all the wires that they can reach, postpone the Congressional test of the case just as long as possible. The writ asked for was then the only legal process by which a remedy for this wrong could be obtained.

When the case came before Judge Twiss, a demurrer was interposed by counsel for the Executive containing several points of demur, which have been published in this paper. The only important one sustained by the Court is that which denied the jurisdiction of the Court of the person of the defendant in his official character. In other words, it was claimed that the Court could not mandamus the Governor. The other points sustained by the Court are insignificant when compared with this. Authorities were freely quoted on both sides of this very important question. Counsel for the Executive argued that this could not be done; that the Governor was independent in his sphere, and in the discharge of his official duties was King; that the legislature, the judiciary and the executive were co-ordinate branches of the government, and one could not command the other. Counsel for the plaintiff contended that this could be done, and had been done; that in California the Governor had been coerced by mandamus in his ministerial duties, and that the California code had been adopted as the rule of procedure in Utah; that the Governor of a Territory was not like the Governor of a sovereign State, but simply the appointee of the Government and that the Supreme Court of the United States had held that a head of department could be coerced by the Court in his duties, and had mandamus the Secretary of the Interior, a higher appointee than a Territorial Governor; and that mandamus had been issued to Governors in other States besides California.

Judge Twiss decided that the Court cannot by writ of mandate compel the performance of any duty by the Governor, in any particular way when the act requires the exercise of judgment and discretion. That is, by implication, that the Court can by mandamus compel the performance of a ministerial act by the Governor. That while the Court cannot command the performance in a specified way of a discretionary act, it can command the performance of a ministerial duty.

Here then is where the whole question in dispute hinges. Is the act which it is sought to require the Executive to perform ministerial or

discretionary? How are we to find this out? How is this point to be settled? Judge Twiss says that, in his opinion, the declaring of a person elected and the issuing of a certificate are acts requiring the exercise of judgment and discretion, and on this opinion his decision is based. We do not think there are many judicial minds that will coincide with his view. We believe that the weight of authorities are with him in his conclusions concerning the power of the Court over the Executive in discretionary acts, and consider that he has carefully and fairly cited them and drawn just conclusions from them. But we certainly fail to see how the plain and mandatory language of the statute defining the Governor's duty in the matter under dispute can be construed to convey judicial and discretionary powers. He is simply required to find out who has the greatest number of votes, declare that person elected and issue a certificate accordingly. There is nothing in the law allowing him any discretion or pointing out anything on which to exercise judgment. It is a simple matter of addition and subtraction, and the enunciation of the result.

Yet, strange to say, the absence of anything in the law defining where and how judgment and discretion may be exercised by the Governor, is cited by the Judge to prove that judgment and discretion are required. In the judgment of the Court, a copy of which is given below, Judge Twiss says it is considered that the duties of the Governor in this matter are not merely ministerial, "since there is no law, Federal or Territorial, directing upon what evidence the inquiry and decision shall be made." Exactly, for there is no "inquiry" to be made and no "decision" to be rendered requiring any direction. What is the inquiry? Simply to find out how many votes were cast according to the returns. What is the decision? Simply who is the person having the greatest number of votes. What law is wanted, Federal or Territorial, to direct such an inquiry and such a decision? The arithmetical rules of addition and subtraction are all that is needed. Any inquiry and decision outside of this ministerial matter of counting the votes and determining which candidate has the greatest number, would be altogether foreign to the duties prescribed by law for the Governor, and therefore any directions in law concerning such, would be altogether superfluous. In this case the Governor undertook to make an inquiry and make a decision on something for which he could not find a sentence of law authorizing his action, and no wonder he could find no law directing him how to act in such extraordinary and self-imposed proceedings.

We would like Judge Twiss or any other person who thinks the Governor's duty in this matter to be anything but ministerial, to show us the law defining or conferring anything more than ministerial power upon the Executive after the election returns are in his hands. The Judge has made copious reference to authorities on the question which we think no sound lawyer will dispute, but he quotes nothing whatever to prove that the Governor's acts in this matter are anything more than ministerial. And the only point in his argument on this question that he cites to support his position, is logically conclusive against it. Yet on this unsound and unsupported view of the Governor's duty in making the count, is based the whole decision which denies the mandamus. If the Governor's duties in this matter are simply ministerial, the mandamus can be issued; nothing is cited to prove that they are anything else; yet the unsupported hypothesis is put forth that those duties are judicial and discretionary, and therefore the mandamus cannot be issued. Country schoolboys sometimes lay small wagers on the way in which a toad will jump; the way that Courts will jump is equally uncertain, and unsafe to risk even an opinion upon.

The idea seems to have gained some ground that the decision in the mandamus case sustains the action of the Governor on the certificate. This is a great mistake. It passes no opinion upon that matter. The Court was not asked to decide whether the Governor was justified in giving a certificate of election to a person not

elected, nor to pass judgment on the right of the Governor to decide a question of citizenship, nor to give any opinion about the illegality and fraud of a proceeding entirely unwarranted by law, justice and precedent. The Court was asked to issue a writ of mandate which the Judge does not consider it had the right to grant, and that is all. The cause of our Delegate is not prejudiced by the decision in any way, neither will the holder of the fraudulent certificate be helped by it in the least degree.

There is one thing in this connection which the people of Utah will now do well to consider. If the Governor of this Territory cannot be compelled by law to perform an act made obligatory upon him by law, nor be punished for his neglect or contumacy; if there is no power in the Courts here to correct a flagrant evil, because of kingly powers possessed by a creature of the Government, it is time that something should be done towards procuring the removal of the irresponsible despot, who has the temerity to rob the people of the dearest political right they possess. His case should be properly presented at the seat of Government, and the power that can be exercised against him be appealed to for justice. If a Governor cannot be made to obey the law, it is clear that a man who respects the law should occupy the position of Executive, and the lawless person who is above the law should be at once removed. This "one-man power" and the whole Territorial system is a foreign element in our political institutions, and it is time that a radical change should be made and the un-American anomaly be expunged from the government of the United States.

LOCAL AND OTHER MATTERS.

FROM FRIDAY'S DAILY, FEB. 25.

Another Case of Idiocy.—The *Millford Sentinel*, of the 23d, has the following:

"A young man residing at Black Rock met with a painful accident on Monday night. It seems that he was attempting to pick off the cap from a loaded cartridge with his knife, when naturally enough, the cartridge exploded, the ball passing through his hand, and striking the wall, rebounded and passed out through the doorway."

Hurry up the Territorial Asylum.

Toes Frozen.—A young man named Soren Larsen was brought in from Bingham, on Wednesday, with his left foot badly frozen, and is now at the Fireman's Hall undergoing treatment for his disabled members, the toes of which are very much swollen. He states that he has been a fireman for about two years, and that on Wednesday, the 16th, he left this city for Stockton to try to obtain work. Arriving there he found no employment and returned to Tooele. Here he met with no better success, and so determined to cross the mountains to Bingham. He started out last Sunday morning, but lost his way and wandered around in the hills until Monday afternoon, when he came to a cabin in a gorge and a man told him he was in Butterfield Cañon, and would have to retrace part of his way in order to get to Bingham. This he did and reached his destination on the same night. His foot was found to be frozen, as stated and he was sent in from Bingham for treatment. Dr. Clinton is attending him.

Classes in Midwifery.—Of the medical students taught by Dr. Roman B. Pratt during last summer in her classes in midwifery, Mrs. Elizabeth Nuttall, of Kanab, Mrs. Jeannette De La Mare, of Tooele City, and Mrs. Sinah P. Bishop, of Salt Lake City, were blessed and set apart by Prest. W. Woodruff and Counselor D. H. Wells, and all passed a satisfactory examination before Dr. J. M. Benedict and Dr. S. B. Young, and received certificates, showing their qualifications and ability to act as midwives.

Another class, consisting of Mrs. M. A. Stoddard, of Grantsville, Mrs. S. L. Goss, of Salt Lake City, Mrs. A. Woolman, of Spanish Fork, and Mrs. E. Papworth, of Hooperville, finished their course of study last Wednesday, and were blessed and set apart by President Jos. F. Smith, assisted by President A. O. Smoot, and in the evening passed a very creditable examination before Dr. S. B. Young and Dr. Ellen B. Fergu-

son, each receiving her certificate of competency to act in this special branch of medicine. Having been duly qualified, as stated above, these sisters are fully worthy of the confidence of the people among whom they are to practice their vocation.

Our City Growing.—Notwithstanding the jealous assertions and predictions to the contrary, of her sister towns and settlements, the fact is very evident, even to the casual observer, that Salt Lake City is rapidly growing. This is not only apparent on the outskirts of town, especially the northern and eastern suburbs, but in the more thickly settled parts, where the work of improvement is continually going on, new, handsome and substantial residences taking the place of log huts and other primitive dwellings, while in the business heart of the corporation old shops are continually being torn down and carried off, and new and imposing mercantile buildings erected in their stead. But as said, the spreading out of the city is especially noticeable in the northern and eastern suburbs. What is still called the Dry Bench, in the 18th, 20th and 21st Wards, and also the 19th Ward Bench, are rapidly being taken up and settled. Cottages and shanties now dot the hillsides, where but a few years ago nothing was to be seen but rocks and sage-brush; orchards and lawns are taking the place of weeds and wild flowers, and where the wolf and coyote once roamed in fearless freedom, making night hideous with defiant howling, occasionally nabbed, however, by the cunningly set traps of the youthful Nimrod, are heard the sweet prattle of children, the songs of the housewife, the busy hum of her spinning wheel and "all that sort of thing." Take for instance City Creek Cañon. A dozen years ago, ten minutes walk from Main Street would have taken the pedestrian into the realms of solitude, out of sight of any human dwelling, and almost beyond hearing of a sound of civilization. Now he can walk and walk, and will have traversed some little way, before distancing the line of human habitations which are gradually creeping up the defile, either on the cañon road itself or along the summits of the range on either side. From present appearances, it will not be long before the hills around the mouth of the cañon will be terraced and adorned with gardens and dwellings, and that once lonesome neighborhood be made one of the most beautiful as it is already one of the most desirable locations for residence to be found within the limits of the city.

FROM SATURDAY'S DAILY, FEB. 26.

Priesthood Meeting.—The regular monthly meeting of the priesthood of the Salt Lake Stake of Zion will be held in the Salt Lake Assembly Hall on Saturday, the March 5th at 11 a. m.

WILLIAM W. TAYLOR,
Clerk of the Stake.

For the East.—Mayor F. Little, whose expected departure for the east we noticed several days ago, left by the morning train in company with Bishop John Sharp, to be absent for several weeks. The Mayor has for sometime been in rather poor health, and has felt the need of respite from labor, and hence the brief period of recreation he proposes to give himself. He will occupy the time while absent in visiting his friends and various places of interest in the States.

Bishop Sharp goes on one of his usual railroad business trips and will come back in about a month. We wish both gentlemen a pleasant and prosperous journey, and a safe return in due time.

Board of Trade Meeting.—The adjourned meeting of the Convention who have in consideration the organization of the Board of Trade for this Stake will be held on Monday evening, at 7 o'clock, in the Council House. At the preliminary meeting held nearly two weeks ago, a committee was appointed to draft articles of association for the prospective Board, and report at the next assembling of the delegates. On Monday, therefore, the committee will make their report, and the result of their deliberations will be presented for the approval of the Convention. The object of the proposed organization, as stated in the preamble to the Articles of Association, is to foster home industries of all kinds; to encourage the investment of capital therein; to encourage the mining of coal, iron

and useful minerals in general; to secure to farmers a reasonable remuneration for their produce; to adjust difficulties and establish confidence and good will between employers and the employed; and to protect the people from impositions of every character connected with general business. The election of the officers of the board will take place on Saturday next.

FROM MONDAY'S DAILY, FEB. 28.

Fast Meeting.—The Saints of this Stake of Zion are especially requested to attend the fast meetings in their respective wards on Thursday, March 3d, 1881, as there will be business of much importance presented for their consideration.

WILLIAM W. TAYLOR,
By instruction of the Presidency of the Stake.

Destroyed by Fire.—We learn by letter received by Bro. A. S. Johnson, that on the afternoon of the 6th inst., the residence of Bro. Wm. C. Kilgore, of McLemores Company, Walker Co., Ga., was totally destroyed by fire, with outbuildings and other property to the amount of \$2,000.

Bro. Kilgore and family will be remembered by many of the Elders of the Southern States mission for their deeds of kindness and hospitality bestowed upon them, while laboring in that State. They have always made their home a home for the Elders, before and since receiving the gospel. We sympathize with them in their heavy loss, and trust that they will be able to establish themselves again soon.

Sad Accident.—The *Leader* of Friday says that an accident occurred on the 18th, at Richmond, which is related as follows:

"Mr. Charles N. Norris, a native of New Zealand, while engaged with others at work, loading up the gravel train, feeling that it was unsafe to work where he was, remarked to the superintendent of the train to that effect; what the superintendent's reply was we did not learn, but it seems that Mr. Norris resumed his work at picking in the gravel bank, when suddenly the bank gave way, falling on Mr. Norris and burying him up all except his head, which received a severe cut in the back part; his foot was also badly hurt and his arm dislocated, but by the assistance of Dr. Ormsby the limb was replaced. He is not considered in a very dangerous condition, although it is thought that he will not be able to do any more very hard work."

DR. ROGER'S VEGETABLE WORM SYRUP instantly destroys worms and removes the Secretions which cause them. (1)

J. J. H. GREGORY'S SEED CATALOGUE.—Mr. Gregory's Catalogue (advertized in our columns) opens with several fine engravings of new vegetables, after which follows an immense variety of flower and vegetable seed, including 47 kinds of Beans, 23 of Beet, 54 of Cabbage and Cauliflower, 26 of Corn, 28 of Cucumbers, 28 of Lettuce, 41 of Melon, 17 of Squash, 24 of Tomato, 36 of Turnip, &c., &c., all duly described. Catalogues are advertised free to all. wlt

DR. MOTT'S LIVER PILLS are the best Cathartic Regulators. (1)

J. A. BAILEY, Land Agent, Salt Lake City.—Write to him enclosing stamp and he will give information FREE about Land Matters. s w

Gale Chilled Plows.

Full car of Gale Chilled Plows en route to Utah for sale at s&w L. B. MATTISON.

You can't afford to laugh dear girls, Unless your teeth are white as pearls—

Unless your mouth is pink and sweet, And your two lips in rosebuds meet; And you cannot supply this want, But through the use of SOZO-DONT! s & w

Mitchell "Spring" Wagons.

No other four spring wagon has the Burr Patent Body except those to be found on Mitchell Spring Wagons. s&w L. B. MATTISON, Agent.