

REMARKS

OF

HON. JOHN TAYLOR,

ON THE

Tooele Contested Election Case—
Atkin vs. Foote, Representatives
Hall, Utah Legislative As-
sembly, Jan. 13, 1876.

REPORTED BY DAVID W. EVANS.

MR. SPEAKER, as I requested this affair to be put off until to-day, it is proper that I should give you an explanation and assign a reason for that course of conduct. I appreciate the feelings of the committee, and of all men who may differ from me in opinion in relation to this matter. I do not wish to force my opinions on this Assembly, nor to take any other course than that which would be fair, straightforward and honorable in the premises as one, and one only, of the members of this honorable body. At the same time I think there are some grave circumstances associated with this affair which demand our most mature and candid deliberation.

We have not been in the habit generally, heretofore, of having cases of this kind presented in this Territory; things, generally, have been done in a straightforward, honorable manner, and I do not remember in the many years that I have been here—perhaps my memory does not serve me right—but I do not remember any contested cases. If there have been any such cases I should be pleased to be informed in relation to them. It has been our desire generally to act wisely, calmly, deliberately and intelligently, and there is no man more strongly in favor of equal, unbiassed and evenhanded justice to all men than I am.

I have felt sorry that this matter has assumed the present shape. I would much have preferred that it had gone before the committee, as previously contemplated, then they would have had a proper opportunity of investigating the evidence, and of eliminating therefrom such facts as should be therein adduced. But as there is a principle involved in this matter, and certain parties seem to think—and they have as much right to think so as I have to think otherwise—that a member who presents himself under the circumstances which this gentleman has, ought to be admitted to a seat without any question, that he ought to be allowed to take the oath and to be placed on an equal footing with other members of the House, it is therefore proper to discuss the question at issue. With all deference to the feelings of the members constituting the committee, whom as gentlemen, I very much esteem, yet I most respectfully beg leave to differ from them in this regard. Here is a gentleman, a comparative stranger in our midst; there could certainly be no object in seeking to deprive any honorable man of a seat in this House; I would be the very last to attempt any motion of that kind, and if the question was merely one of some little informality, some little technical difficulty that might have transpired, which very frequently occurs in election contests, wherein there was some small discrepancy, then I should have paid no attention to it, but should have said—"Certainly, let the gentleman come in, let him have his position and enjoy all the rights of a member, until it shall be amply proven that he does not possess those rights."

But happening to have been in the county that the gentleman hails from, sometime ago, I heard a statement of these facts from an honorable gentleman here beside me, Mr. Rowberry, whom you are well acquainted with, a former member of this House, and from other gentlemen in that district of country; and their statements led me to suppose that there had been a great amount of fraud perpetrated, and that it was a deliberate determination to defraud the rightful possessor of a seat in this House of his legitimate claim thereto, and to force upon this Assembly a man who had no legitimate right; and therefore I have felt a desire that my honorable colleagues should be made acquainted with some of the facts pertaining to this matter. I have selected a few of them, perhaps there may be errors mixed up with them; if there are I ask the indulgence of the House and of the gentleman concerned and everybody interested, and I am ready

always to make amends for anything in the shape of mis-statements that may proceed from myself.

With these preliminary remarks I wish now to go into an investigation of some of the details pertaining to this affair.

It would seem, and I suppose is well known by the majority of this Assembly, that some time ago there was a conspiracy entered into, to attempt to deprive the citizens of that county of their rights, and through them to introduce among this community a scene of confusion and evil, in which many persons were concerned that I wish, for the honor of the gentlemen representing the government and all concerned, was not the case; for they ought to be engaged in more laudable pursuits. The thing that I refer to was an attempt to get in possession of that small county, to control the courts, and through those courts the juries, and through the courts and juries to make war upon the rights, liberties, property and immunities of the citizens of this Territory; and this was part of that scheme inaugurated several years ago, the object of which was to obtain possession of the courts, and then to control a jury of their own selection, of which we have had evidence right in our city. But as it was anticipated, through the McKee bill, the Frelinghuysen bill, the Poland bill, or some other congressional enactment, that some relief would be obtained whereby they would be enabled to carry out their projects. They calculated to have that little place set apart to operate in, and then to drag forth our citizens, no matter whether they were guilty or innocent, and the more innocent and unsophisticated the more likely they were to be pounced upon, and then, with juries of their own selection to override all law, trample under foot all equity, and do violence to the interests, happiness, peace and prosperity of the citizens of this Territory. And that, it will be seen, would be an easy matter with a court of their own selection, a jury of their own selection, witnesses of their own selection, and the rule and exclusive management of these things at their own discretion.

To prove that this is no phantom permit me to state some things that took place under McKean's administration here, wherein, in a territory of one hundred thousand or one hundred and thirty thousand inhabitants, not one Mormon was permitted to find his way on to a jury here; courts sat, evidence was had, judgments given, etc.; men were charged with crime, arraigned and sentenced. Then a system of things was inaugurated that was calculated to sap the foundation of civil liberty, to ride over the citizens of this Territory, to trample under foot the Constitution of the United States, and to rob the citizens of this Territory of every right, privilege and immunity held sacred and honorable among men.

Happily there was a superior court that reversed these decisions; for after sitting for a length of time and adjudicating for eighteen months, the whole of McKean's decisions that were appealed from were reversed, overthrown and repudiated by the action of the Supreme Court of the United States. Thank God, we have some other powers than those with which we have been so intimately surrounded, and there is some protecting Aegis in these United States.

Now then, in order to show some of the leading facts pertaining to these matters, I will refer to an action taken, as I am informed, by the then Governor Woods, which Mr. Rowberry informs me he is prepared to substantiate before this committee when it shall be in session. I am very sorry to find that such men were mixed up with such affairs, but so it is; it is not of my doing, I am merely stating things as they exist. Governor Woods stepped down from the elevated position that he occupied here, as the Chief Executive of this Territory, to go forth and make speeches among the mining camps through that county before the election commenced. And at that time, in these mining districts, where whiskey was freely circulated—with a zeal and eloquence worthy of a better cause, he, with inflammatory speeches, roused the passions of those people to that extent that I am informed it was considered quite unsafe for peaceable citizens to travel anywhere in their vicinity for a length of time,

and on one occasion, I am informed by my honorable friend here, he said to the electors in his electioneering speeches,—"Now gentlemen, come early and vote often." And this from the Chief Executive of this Territory! I am sorry to have to repeat such statements, but I firmly believe them to be true. And then, at the time of the election free drinks were circulated in all these camps, and drunkenness and riotousness prevailed to a very great extent, so that it was impossible that a strict surveillance could be had under the circumstances, or that any correct account of the votes could be kept. It was impossible that any of these votes could be properly challenged under these circumstances; for who could meet a lot of armed men in these isolated camps and attempt to dispute any action of theirs while frenzied with liquor and with the speeches of Governor Woods?

I next come to another personage who seems to have figured in this affair, and that is the then honorable Judge McKean, who at that time stood forth prominently in the political arena. It is true that he used a little more strategy than Governor Woods, but his action was not the less efficacious. I hold in my hand an affidavit said to be a statement by the then Chief Justice to a Mr. Lawrence Bethune, which I will read.

Territory of Utah, ss.
Tooele County, ss.

John Gillespie and Edwin Broad, being by me duly sworn, deposed and said that they are citizens of the United States of lawful age, and residents of Tooele County, Utah Territory; that on the 3rd day of Aug., 1874, they were at the Polls at Jacobs City Precinct, County and Territory aforesaid; that Lawrence Bethune was then and there Judge of Election, that he did openly and in defiance of law permit aliens to cast their ballots, that he, the said Bethune, at his own instigation, after the parties had admitted that they were aliens and had not resided in the Territory three or four months, put them under oath, in substance as follows: "You solemnly swear that it was your intention to come to this country when you left Wales (or England as the case may be)." If they answered in the affirmative, they were admitted to vote. Also when voters were challenged as to whether or not they were tax-payers, he, said L. Bethune, would put them under oath, asking them if they were liable to pay tax. If they said they were, they were permitted to vote. And deponents further set forth that said Lawrence Bethune assigned as a reason for his conduct that he was instructed to that effect by Chief Justice J. B. McKean.

JOHN GILLESPIE,
EDWIN BROAD.

Subscribed and sworn to before me this 19th day of October, A. D. 1874.

F. J. HAMMERLUND,
Notary Public,
Tooele County, U. T.

Now then, in relation to that I do not know that I need say anything, you are doubtless familiar, generally, with the laws of our Territory in relation to voting. I will refer you, however, to the sixth section of the thirty-fourth chapter of the laws of Utah on that subject; it reads as follows—

SEC. 5.—No person shall be deemed a resident within the meaning of this act, unless he is a tax-payer in this Territory.

Yet we find that the honorable Judge McKean instructed the judge of elections that if men solemnly swear that when they left England or Wales, it was their intention to come to this country, they were to be allowed to vote.

I have a statement here of a circumstance that took place in a jury room in this city wherein George W. Bryan swore that he knew of hundreds of illegal votes being cast.

Territory of Utah, ss.
County of Tooele, ss.

George W. Bryan, being by me duly sworn, deposes and says that he is a resident of Tooele County, U. T., and a citizen of the United States of America; that at the September Term of the District Court of the Third Judicial District of Utah Territory, A. D. 1874, he was summoned by the Grand Jury, then in session, to be and appear before said Grand Jury, and to bring with him the ballots and poll lists of the General Election in the year A. D. 1874; that he did, in compliance with said summons, bring said ballots and poll lists in, and delivered the same to the Jury. Deponent further states that while in the Jury Room he was asked by one of the Jurors if he knew of any illegal votes on the side of the "Liberal Party," to which question he, the said deponent, then and there replied, "Yes! hundreds of them;" and further deponent saith not.

GEORGE W. BRYAN.

Sworn and subscribed to before me, this 8th day of January, 1876.

F. J. HAMMERLUND,
Notary Public,
Tooele County, U. T.

It may be asked here, if this is the case, if so many hundreds of illegal votes were cast, as is speci-

fied in the statement I have read over, why was it that these people were not prosecuted? Well, the fact is, some of our people, on the other side, were prosecuted, in most instances because they had obtained their citizenship through the medium of the probate courts. A number of our people, one after another, were hauled up and prosecuted, and yet they thought they had done right in being naturalized by the probate courts. However, the Judges here decided otherwise and fined a number of citizens for voting who held naturalization papers issued by the probate courts. But since then all the acts of our probate courts up to the passage of the Poland bill, on which the time for appeals had expired have been invalidated by that bill, and thus legalized by the Congress of the United States. How is it that Mormons were prosecuted and fined for voting after having declared their intention and passed on by the probate courts, when votes on the other side were allowed to men who merely signified an intention at the polls to settle in the country? Such is justice in Utah.

Now I think it was an extreme measure for these judges to punish our people for voting, who had been naturalized by the probate courts, especially seeing that there were hundreds of men on the other side who, had they been hauled up, were liable to the extreme penalty of the law for illegal voting. It may be asked—"Why were they not brought up?" For the simple reason that, as a general thing, they were not there to bring up, they had been imported many of them from distant places, and many of them never had been there at all, for names were put down that were fictitious, and Mr. Rowberry will inform the committee that he knows of many who voted more than once on the same day at the same polls. At an investigation had in Tooele county before the Probate Court, not for a representative in the Assembly, but at the same election, for county officers, this corrupt style of voting was shown.

I am informed that sixteen parties who had obtained papers from the Probate Court were indicted, one half of whom were women; but none on the other side, from the fact that so many names were fictitious, hence there were comparatively few to prosecute, it was fabricated and made up from beginning to end. Besides, it was considered useless, as the ruling clique manipulating the courts and officers felt themselves under no obligations to prosecute members of their own party.

I will now refer you to Mr. George Atkin's notice of contest of election, which appears in the minutes of this House of January 11th. It is as follows:

TERRITORY OF UTAH,
TOOELE COUNTY.

To R. Warburton, Clerk of said County of Tooele.

Sir—Take notice that I design and intend to contest the Election of Erastus S. Foote to the Office of Representative to the Legislative Assembly of the Territory of Utah; Election held on the (3) third day of August, A. D. 1874. Wherefore, pursuant to Section 11 of an Act of the Legislature of the Territory of Utah, approved Jan. 3rd, 1853, (Entitled an Act regulating Elections,)

GEORGE ATKIN,

Aug. 11th, A. D. 1874.

I, Richard Warburton, County Clerk of Tooele County, U. T., certify that the above and foregoing is a correct copy of the original notice of Contest of the Election of Erastus S. Foote, as Representative to the Legislative Assembly of the Territory of Utah.

Witness my hand and Seal of said County Court this 11th day of August, A. D. 1874.

R. WARBURTON,
County Clerk.

In the matter of Contest of Election for Representative to the Legislature of the Territory of Utah.

George Atkin, Contestant, vs. E. S. Foote, Respondent.

To the Hon. Speaker and Members of the House of Representatives of the Territory of Utah.

I, George Atkin, do hereby contest the right of E. S. Foote to a seat in the House of Representatives of the Territory of Utah, on its twenty-second session, on the following grounds, to-wit:

That at the General Election, held on the 3rd day of August, A. D. 1874, votes were cast in the several precincts of Tooele County for George Atkin and E. S. Foote, for Representative to the Legislature of Utah, respectively, as follows:

PRECINCTS.	Geo. Atkin.	E. S. Foote.
Tooele,	346	35
Grantsville,	305	4
Stockton,	19	140
Jacobs City,	14	545
Ophir,	26	378
Lewiston,	1	43
Vernon,	60	14
Johnson,	102	7
Quincy,	11	2
Mill,	56	6
Pine Canon,	53	0
Deep Creek,	25	27
Totals	1017	121

That in accordance with a finding, decision and decree by the County Court of Tooele County, Utah Territory, in the contest case of Wm. H. Lee vs. James M. Lynch, it appears that at Stockton Precinct were cast 116 illegal votes, at Lewiston Precinct were cast 35 illegal votes, at Ophir Precinct were cast 239 illegal votes, at Jacobs City Precinct were cast 526 illegal votes, at Deep Creek Precinct were cast 23 illegal votes, making in all 989 illegal votes, which being deducted from the entire number of votes cast for said E. S. Foote leaves a balance of 221 legal votes in favor of said E. S. Foote, and discarding from all the votes given for George Atkin, the entire number of votes given for said George Atkin in said five Precincts, still leaves a majority in favor of George Atkin of 711 votes.

Therefore I, George Atkin, the Contestant, ask to be admitted to a seat in the House of Representatives, to represent the County of Tooele, Utah Territory.

GEORGE ATKIN.

Subscribed and sworn to before me this fourteenth day of January, 1876.

A. P. ROCKWOOD,

Chairman of Committee on Elections.

Investigation was had, I am informed, not by the whole court, but by the selectmen. The judge at that time refused to act, and why? Because he was one of the opposing party, one of the conspirators, and in that court it was not expected that anything should be done for anybody except those interested in that party, it was at variance with their code of ethics, and consequently the judge would not be present on the occasion. But those gentlemen who were present, forming a quorum of Tooele County Court, made this investigation, and attached their names to it. Then again, there is no seal of court to this document, for the simple reason that the seals of some of courts are only intended to be affixed where they can be used for the benefit of parties interested; not for the public good, not for the maintenance of justice, equity and truth, nor for individual, social, or constitutional rights. Mr. Speaker, that is the way I look at it; and furthermore I am informed that the clerk was instructed by the judge not to attach the county seal to that document.

It may be next said that this is a case of certain county officers. True; but then why do we not have evidence on the present case? Simply because this is a territorial affair, over which the House holds jurisdiction; being the judge of the qualifications of its own members, and the county officers considered they were not competent to investigate territorial affairs. But Mr. Atkin was on the same ticket with these other gentlemen in whose case this decision was given by the County Court. It will be for our committee to investigate this matter, if they can obtain the election returns. You may ask why not? I am informed that they were stolen from there, but Mr. Rowberry will explain. Perhaps I am in error, and if so I wish to be corrected.

Mr. Rowberry, being permitted by the House to speak, said—"The matter to which Mr. Taylor has reference now was the posting and counting the result of the election. The poll box, tickets, etc., were taken by the marshal to the Grand Jury room in Salt Lake City."

Mr. Taylor—"That was taken then by authority?"

Mr. Rowberry—"Yes, but the returns in this instance were not taken to the Secretary by authority."

Mr. Taylor—"Then it would seem that it was the posting and counting the result of the election that was taken. That is where I stand corrected, it is simply a misconception. I do not wish to make any statement that is improper or incorrect in any particular, but to treat everybody as I would wish to be treated under the same circumstances."

The speaker then resumed the subject under discussion—

It was from this kind of returns, without an investigation, that the gentleman, Mr. Foote, received his certificate of election as a member of this Assembly. The returns of the whole affair were either in the hands of Mr. Foote, or in the hands of his predecessor, one of the same