

express provision in section 9 of the act of Congress for the delivery of ballot boxes to said board, by special messenger, or otherwise, as provided in the act of 1878.

This important provision of the Territorial law, by which the purity of the ballot could be preserved, would also be rendered nugatory by the interpretation contended for, unless that power too were conferred upon the board by mere implication.

The rule of law is that such a board, being the creature of statute, must look to such statute for its authority and power, which otherwise would not exist in its favor, and that it will not be aided by implication or judicial construction.

It is evident that the word "returns" in the clause of section 9, last quoted, was used in the same sense, and should be given the same interpretation, as in section 22 of the Territorial act.

By comparison of the two statutes it will be seen that before the passage of the "Edmunds Law" the assessors were the registration officers; now said officers are appointees of said board; then the judges of election were appointed by the county court; now they are the appointees of the board; then the clerk of the county court and members thereof constituted the board to canvass the returns from the judges of election and recount the ballots in proper cases, now such canvassing board must be appointed by the board of commissioners; then the secretary of the Territory, in the presence of the Governor, canvassed the returns under section 22, which are provided for in section 21 of the act of 1878, and issued certificates of election to the members of the Legislature; now in addition to making all the appointments of election officers, provided for in said last mentioned act, the board of commissioners perform the duties formerly devolved upon the secretary of the Territory and the Governor. Under the act of Congress of 1894, to admit this Territory into the Union as a state, the said board is also required to canvass the election returns for delegates to the Constitutional Convention, which returns must be canvassed and certificates issued by the said board, in the manner provided in section 22 of the Territorial act.

Nowhere do I find any authority, either by express provision of statute or by necessary implication for said board, in any case whatever, to go behind the returns and open the ballot box for the purpose of canvassing the ballots to declare the result of any election of any candidate for office. This is an assumption of power unauthorized by law. Nor is there any provision of law which authorized the sending of a ballot box to said board for any such purpose, or for any purpose. The ballot box, after the close of an election, must be kept and the ballots disposed of by a board of "proper persons," appointed by said board of commissioners, and they must be kept and the ballots disposed of in the manner provided in Section 20 of the act of 1878.

The next material question is whether mandamus is the proper remedy to enforce the performance of an official duty on the part of said board, in a case where they refuse such a performance.

Where the performance of a specific act, ministerial in its character, is refused by an officer, or board of officers, upon whom the duty of its performance is devolved, and any person will be injured because of such refusal, such person may have a writ of mandamus to compel its performance.

So where, as in the case at bar, an election board, whose duty it is to canvass the returns of an election, make an abstract thereof, and issue a certificate of election to the candidates for offices, refuses, after the canvass and abstract have been made, to issue such certificates, which is purely a ministerial duty, the person who will be injured because of such refusal may have a writ of mandamus.

Throppon Pub. Officers, secs. 156 and 538.

McCrory on Elections, sec. 376.

Board of Liquidation vs McComb, 92 U. S., 531.

In this case, no question being made as to the legality of the election, although there appears to have been some irregularity in its conduct, the court will presume, in order that justice may be done, that the law was substantially complied with.

In the case of the application for the writ of prohibition, the controversy is between the same parties, and the legal questions arising under the statutes are substantially the same, and, therefore, the construction of the statute in the mandamus proceeding applies with equal force in this proceeding.

The only remaining question is whether under the circumstances of this case the writ of prohibition will lie to prohibit the said board from canvassing the ballots and declaring the result of the election as to any candidate, and issue a certificate of election on such canvass.

It is shown by the evidence that the ballots were canvassed and the result of the election declared on said canvass, and that the only act remaining, which the defendants were attempting to perform, under an assumption of power, was the issuance of a certificate of election.

At the close of the trial the defendants signified their willingness to issue the certificate in accordance with the original canvass. Under the circumstances there appears to be no necessity for the writ.

The objection of counsel for the relator, to the admission in evidence of the registry lists and judges' lists, is overruled.

The admissions made by the defendants in the prohibition cases as to the evidence render it unnecessary to rule on the points raised during the course of the trial.

The writ of mandate is granted. The writ of prohibition is denied.

NOTES FROM RIVERTON.

RIVERTON, Salt Lake County,
January 10, 1895.

An infantry company of the Utah militia has been organized here, with N. J. Christensen as captain, William Soelberg as first lieutenant, and Thos. P. Page as second lieutenant. Captain Christensen went to Salt Lake City today for the purpose of obtaining equipments for the company. He was informed by General Ottinger that the

uniforms could not be furnished as there were not enough to supply them, but that the guns and other equipments would be provided in the near future.

The Riverton Dramatic association will present "The Social Glass" at the Draper hall on Friday evening, January 18. The proceeds will go to assist Elder Charles Jensen, who is now laboring as a missionary in Samoa. The following characters will take part in the play: W. H. Bowlden, John Hansen Jr., Wm. Slicock, F. W. Webb, N. J. Christensen, E. A. Walker, Edith Miller, Mrs. Bowlden and Dora Peterson. The company made a great success of this play at the opening of the Riverton theater on January 3rd, and the people have requested that it be reproduced here. C.

UINTAH STAKE SUNDAY SCHOOLS.

Representatives of the various Sunday schools began assembling at Stake Superintendent James Hacking's fine home, December 31, 1894, at 7 o'clock. By 8:30 o'clock there were about one hundred people present.

Services were called to order by Asst. J. P. Rudy of the Stake superintendency, and the following program was rendered:

Singing, Kind Words, etc.
Dedictory prayer was offered by Stake President S. R. Bennion.
Speech of welcome by Superintendent James Hacking.
Poetical essay, Sabbath School Workers, by Sister Caroline Stringham of Millard Sunday school.
Song, Sweet Marie, by John N. Davis of Vernal school.
Recitation, What it Takes to Make a Gentleman, by Miss Alina Adams of Mountain Dell school.
Speech, The Faculties of the Soul, by Prof. N. G. Sowards of Ashuey school.
Song, Gates Ajar, by Mrs. K. S. Woodward of Millard school.
Recitation, Guilty or Not Guilty, Miss Carrie Nielson, of Mountain Dell school.
Instrumental duet on the organ, Cedar Hall Waltz, Misses Rose Reynolds and Sarah Oakes, of Millard school.
Song, The Warrior Bold, John Bowler, of Vernal school.
Song, Whippoorwill Song, James Hacking and family.
Recitation, If We Knew, Miss Almeda, of Millard school.
Song, Only a Tress of Mother's Hair, John Searle, of Mountain Dell school.
Recitation, A Look at Early Life, Miss Mary M. Hall, of Millard school.
Recitation, The One Legged Goose, Miss Grace Stringham, of Millard school.

After which (during the passing of apples of Bro. Hacking's own raising) a bounteous feast was spread, to which those present did ample justice.

After supper the work of the normal class was spoken of by Brother J. P. Rudy and afterwards decided that the Stake authorities of the Sunday school should conduct the class at Brother Hacking's house each Friday evening. Brothers J. P. Rudy and R. S. Woodward were appointed class instructors by Brother Hacking.

The parlor and dining-rooms being thrown together by large rolling doors, the old people began dancing, led off by President S. R. Bennion, Superintendent Jas. Hacking, Patriarch Nelson Merkley and Bishop's counselor, Robert Bodily and partners. In the study-room upstairs the young people were enjoying games, while in the kitchen the children were at their play. The dancing was interspersed with songs, recitations and instrumental music, etc. R. S. WOODWARD,
Stake Secretary.