

us. These influences are those of the example of professed Christian peoples, whose homes are childless. Keep these influences out of your families, for the curse of God will be visited upon those who submit to them.

Happy are they who have the fellowship of God. What if we are deprived of political privileges. What if the power of death comes into our midst. Three presidents of the Church have passed away. I remember the scene when Joseph Smith was taken, and when he knew he was going to his death, he suggested to his brother Hyrum to depart, but Hyrum stood by Joseph and died with him. They sealed their testimony with their blood. We have reaped the benefits of their sacrifice. Shall we now turn from our course of righteousness, or shall we stand firm in the blessings of the everlasting covenant?

God has given us this land for a home, a land where tyranny shall not prosper. If we honor Him, though the nations of the earth may rise against us, the Almighty will maintain His people in the midst of these mountains; the towers of Zion shall shine, and Christ will come and reign. I say Hosanna, the Lord God omnipotent reigneth! Let us be true to Him. Let us walk in the paths of truth, and prison walls and bars cannot shut out the love of God from our hearts. May His peace be with us that we may be full of love and charity for all and be faithful to that which is good and true. Then will the Lord bring salvation to His people.

Sister Lizzie Thomas rendered a solo, "The King of Love my Shepherd is," and the choir sang the anthem,

"Praise ye the Father."

The closing prayer was offered by Patriarch John Smith.

CITY COUNCIL DECISION.

In the contest for the Fourth precinct city officers, argued Monday, February 17, Judge Zane made the following decision on Tuesday, February 18.

Utah Territory. The Third District Court, February Term, 1890.

Richard W. Young, John F. Smith and William J. Tuddenham, plaintiffs, vs. Elijah Sells, defendant.

ZANE, Judge.—This is an application for a writ of mandamus to compel the defendant to issue certificates of election to the complainants.

It appears from the plaintiffs' petition and the answer of the defendant that the defendant was duly authorized to canvass the votes cast for the various candidates at the municipal election held in Salt Lake City on the 10th instant, and to declare the result and to issue certificates of election to the persons receiving the highest number.

The law provides for the election of three councilmen from each of the five municipal wards. It also appears that the electors of the

Fourth Ward voted for six persons, and that the electors of the city outside of that ward also voted for the same persons; that each of the three plaintiffs received a greater number of the votes of the electors of that ward than any of the other three persons voted for, but that the latter three received more of the votes of the electors of the entire city than any of the plaintiffs; that the defendant having so found from the canvass, declared the three receiving the greater number of the votes of the electors at large elected, and that he refused to issue certificates of election to the plaintiffs, the three receiving the greater number of the votes of the electors of the ward.

The first question in this case is in the order the Court will consider them is of the ward. Assuming that the councilmen should be elected by the voters, had the defendant the discretion to declare the three men receiving the least number of the votes of the electors of the ward elected, and to issue certificates to them and to refuse to issue certificates to the plaintiffs, who received the higher number. The ordinance declares that upon the receipt of the ballot boxes and the returns the canvassers "shall carefully examine the returns, and if no irregularity or discrepancy appear therein, affecting the result of the election of any candidate, they shall accept said returns as correct; but if the right of any person voted for, for any office, is in any way affected then the" canvassers "shall open the ballots and canvass the same, so far as to determine the rights of the persons whose office may be affected. They may also cause to appear before

them any person whom they may deem proper, and take their testimony in relation to said election; there is nothing before the court showing that any irregularity or discrepancy in the returns appeared to the canvasser, and without this he was bound to accept them as correct. Revised Ordinances of Salt Lake City, 1888, sec. 18, p. 118. Section 19, same page, declares that after the completion of the canvass the canvasser shall declare the result and immediately make out and transmit a certificate of election to each person elected. If an irregularity or discrepancy appears in the returns the canvasser doubtless has some discretion in making the canvass; but when he has reached a result he has no right to declare the person receiving the fewest legal votes elected and to issue a certificate to him; he must give a certificate in that case to the candidate receiving the most legal votes, if he is qualified to hold the office; the qualification of the plaintiffs are admitted by the pleadings. In the case of Ellis vs. County Commissioners of Bristol, 2 Gray, 375, the court said, Chief Justice Shaw delivering the opinion of the court, "But we are satisfied that it is competent for this court on this writ, at the instance of the prosecutor, to inquire into the facts and to require the county commissioners to do what it was plainly their duty to do, and

what it is still in their power to do, to declare and certify, if such was the fact, that the prosecutor had the highest number of votes for the office."

In *Clarke vs. McKenzie, etc.*, 7 Bush p. 523, Albert H. Clarke and James O. Ellis were rival candidates for the office of judge of the Christian County court, and on the day designated by law for that purpose, W. W. McKenzie, then the county judge, and E. M. Buckner, the county clerk, organized as an examining board for the purpose of comparing the polls. And in consequence of the rejection by the examiner of an unattached and unsigned paper, the certificate of election was given to Ellis, and Clarke applied for a writ of mandamus to compel the board to count all the votes polled and to issue to him a certificate of his election, and the lower court refused the mandamus. But the Supreme Court held on appeal that it was the duty of the board to compute the votes cast for the several candidates and to issue certificates of election to the candidates receiving the highest number of votes, and also held the fact that the board had acted and issued a certificate to a candidate who had not received the highest number, furnished no reason why they should not be compelled to issue a certificate to the one who had. In the case of *Vallejo vs. Fay*, 10 Cal. 376, the court held that the supervisors had a discretion in making the canvass, and denied the writ. The court did not hold that the board might refuse a certificate to the person receiving the highest number of votes as shown by the canvass.

A further question raised upon this application for a writ of mandamus is: Does the law require the councilmen to be elected by the electors of the respective wards or by the electors of the city at large?

The Supreme Court of this Territory, at the January term of the present year, in deciding the case of *Bynon vs. Page*, held that the officers provided for in an act for the incorporation of cities, in force March 8, 1888, were the proper ones to govern Salt Lake City; and also held that section one of article six was applicable to it. That section is as follows: "There shall be elected in all cities of this Territory the following officers: In the cities of the first class, a mayor, elected at large, and three councilmen from each municipal ward; in cities of the second class, a mayor, elected at large, and two councilmen from each ward; in cities of the third class, a mayor and seven councilmen elected at large; * * * and in cities of the first and second class a justice of the peace from each municipal ward; and in cities of the third class two justices of the peace to be elected at large; Provided, that in the case of any incorporated city in which at the time of the passage of this act, the members of the board of aldermen or council are elected from districts or wards, the provisions of this section shall not apply, nor shall this act in