

that he was a voter, and handed a People's Party ticket to Mr. Allen, and that Allen took it; that he had another ticket in the other hand when he received it from him, and that he did not put the one in which he gave him, but the other one; and I believe that the ticket which was put in was different in its appearance from the one that he handed him; at least, he did not put the same one in.

The evidence further shows beyond any controversy that there was a package of tickets near the ballot box, and that they were within reach of Mr. Allen, the judge; and it shows quite conclusively that there were tickets folded and in some of them, at least. A number of persons testify that during the day, at different times, Allen was seen with one of these tickets in his hand, or tickets that he had not received from voters. It also appears that he was seated on a high seat near the window; that the voters came to the window and delivered to him their ballots, and that he took them, and it was his duty to put them in the box. One of the other judges, Mr. Ball, states that he was checker, and that he held a list of voters, and checked off as they voted, and Mr. Woolley wrote the names down on a sheet. Their attention of course was occupied. Mr. Blair testifies that some of those ballots on the table that were near the box got on the floor. He opened one, and found it was a Liberal ticket, and Mr. Williams' name was on it.

Mr. Allen testifies that he did not change any of these tickets; that he put in the tickets that were handed to him. The returns, of course, are *prima facie* evidence; and the question is whether the preponderance of evidence shows that there were as many as three ballots which were cast for Young that were not put in, but that tickets for Williams were substituted and put in their place.

The circumstances preceding and attending this election of course add strength or detract from the facts testified to, because no human act of any importance stands alone. It is the effect of some preceding act, and it in its turn becomes the cause of others; and hence all such acts as this have others standing around them that are related to them, either as effect or cause; and in the light of human reason they add strength or they detract from the statement of witnesses as to the existence of a fact in dispute. The credibility of witnesses must also be determined by reference to their conduct as it appears in evidence.

It appears from the evidence in this case that about a week or ten days before the election occurred—it is shown from the testimony of Mr. Kessler, the registrar—Mr. McCallum, who was the chairman of the Liberal committee, came to him (Kessler) and told him that Mr. Greenman was not going to serve as judge of election. He seems to have been considered presiding judge, to take the votes. He told Mr. Kessler that he wanted him to swear in Mr. Allen, as he was a suitable man,

Mr. Kessler agreed, if Mr. Greenman was not there, to swear Mr. Allen in. Mr. Greenman did not appear on the election morning, but Mr. Allen did, and he was sworn in and acted as presiding judge, receiving the votes.

It appears from Mr. Allen's own account of himself that he has at different times gone under different names. He seems to have been unsettled. He says he was a foot racer, and that his object in changing his name was for "professional reasons." He gives that as an excuse for changing his name at various places.

It seems that he came here last December and brought his family with him. Since then he has been tending bar in a saloon, which he mentions.

Mr. Greenman states that Mr. McCallum spoke to him about acting as judge of election a day or two before the election, and suggested to him that he had better stay in his office—that it might become necessary to make arrests and issue warrants on election day. Under these circumstances this Mr. Allen was sworn in and acted.

He appears before the court under very suspicious circumstances, and the evidence places Mr. McCallum also under very suspicious circumstances. It is to be regretted that any party should be so damaged in reputation, as it seems to have been, by this action of Allen.

There is no evidence here that casts the slightest suspicion upon any candidate or upon any other judge of election than Allen, nor upon the challengers or checkers, nor upon any other person, so far as I have been able to discover; except Mr. Allen and Mr. McCallum.

There are some circumstances, it is true, which would seem to detract somewhat from Mr. Blair's statement, but he gives an explanation which may be correct. It is strange that he did not, at the time object that this fraud was being perpetrated upon the voter, and that he did not make a public statement—that he did not call the attention of the judges to it.

The circumstance is somewhat the same with Mr. Thornberg; that he did not call attention to the fact that he saw his vote was not put in.

But when these circumstances are considered with the others they seem to give force to the effect of the statements of Blair and Thornberg, and those of the voters who testified they handed their votes for Young to the judge and they were not found in the box. When the returns were taken into account, they would have been just as they are, probably, if the statements of Blair and the other witnesses were true.

When all this evidence is considered candidly and fairly in the light of all the circumstances which surround the case and the action of Allen, I am of the opinion that the weight of evidence is clearly against him, and that these votes—at least these three—cannot be counted for Williams. They ought to be counted

for Mr. Young if they were wrongfully left out of the ballot box.

In a government which rests on the will of the people, the people should see that that will is expressed—that it shall not rest upon deception and fraud, nor upon the action of a rascal and a wretch who attempts to overthrow the expression of the people's will, and thereby commits a crime akin to treason under a government which protects him.

The judgment of this court is that Mr. Young was elected to this office and that Mr. Williams was not.

I wish to call the attention—His Honor, without finishing the sentence, added: "I will have the grand jury brought in at 2 o'clock, and will say what more I have to say then."

Upon the re-assembling of the court at 2 p. m., the grand jury having taken their seats, Judge Zane addressed them in the following terms:

Gentlemen of the grand jury—I wish to ask your attention to a charge against one William J. Allen, who acted as judge at the second poll in the Fourth Municipal Ward at the school election held on the 14th day of July last.

The charge, if true, is that he received certain votes and did not put them in the ballot box afterwards, though he took other votes and put them in, thereby committing a fraud. It is this charge that I ask your attention to, and I charge you that it is your duty to investigate it thoroughly.

There are circumstances, and facts also, which have come to my knowledge that seem to implicate one McCallum—his first name I do not now remember. It is your duty to investigate his conduct also.

The statutes of the Territory passed for protecting voters and for purposes of securing a fair expression of the voice of the people on matters upon which they are asked to vote—of securing honest elections—provide that every officer or judge at an election who withholds, changes, or destroys any ballot papers, or fraudulently places any ballots in the ballot boxes, or takes any therefrom, or aids or attempts to aid in such acts, is guilty of a crime, and liable to be confined in the penitentiary for a term of not less than two nor more than seven years.

Another section of the statutes provides that any one who wilfully aids or abets in the commission of any of the aforesaid offenses shall be liable to imprisonment.

So that if you, after a full and fair investigation of all the evidence, find that, in your opinion, there is sufficient ground for believing that a conviction may be had, that an indictment should be found, that a trial before the petit jury should take place, then it is your duty to indict.

These laws, as I said, were passed for the purpose of protecting the voter—to allow of a fair expression of the will of the people, and to prevent fraud of a character such as is charged.