

Allen from time to time. I saw nothing peculiar in his conduct, and thought that his arrangement of the ballot box was perfect.

Mr. Moyle—Could a short man see the ballot box?

The Witness—Yes; every voter could see his ballot deposited.

Mr. Moyle—If forty witnesses should swear that they could not see the box, it would make no difference?

The Witness—They could all see the box.

Charles M. Bell testified—I was on the ground on the day of this election in the interests of the Liberals. I was one hundred feet away from the polling place, and during the day walked up to the polling place a dozen times. I saw nothing peculiar in the actions of the defendant.

F. S. Griswold testified—I acted as challenger for the Liberal party at the poll where Mr. Allen presided. I saw nothing improper or noteworthy in Mr. Allen's conduct. The ballot box was placed so that all voters could see it. I observed that the method of conducting the election was the same as that used in Colorado.

C. J. Gaddy—I was present at the election in question. I saw nothing unusual in Mr. Allen's conduct.

Mr. Moyle—Did any one vote while you were there?

The Witness—No.

The defendant was then called and testified—I have heard several witnesses testify that when they came up to vote I held ballots in my hand. After we had arranged the window, I placed the ballot box on the table and then someone gave me a lot of tickets to hand out to voters and I did so. I did not change any ticket given me by a voter for another, nor did I indulge in any passes over the ballot box. Every man who gave me his ticket and was entitled to vote did vote. I remember that a man named Openshaw came to the window to vote and that there was some trouble about his voting. I don't remember whether he got to vote or not, but I did not throw his ticket back to him. I did not in any way interfere with the right of any one to vote. After the polls closed, I opened the box and the ballots were counted and found to be correct.

To Mr. Moyle—I came from Illinois originally. My name is W. J. Allen.

Mr. Moyle—Were you ever known by any other name?

The witness—Only when I was running foot races.

Mr. Moyle—What was that name?

The witness—Oh, that's got nothing to do with this case.

Mr. Moyle—I insist upon an answer.

The witness—I refuse to answer.

The Court—I suppose the question may be answered. It doesn't make any difference.

Colonel Ferguson—Oh, tell him all about it.

The Witness—Well, I went under different names.

Mr. Moyle—What names?

The Witness—Well, I have said I

went under different names, that's enough for you.

Mr. Moyle—Where were you born?

The Witness—In Freeport, Illinois. I went to Chicago with my mother when quite young and remained there seven years. I never did settle down until I went to Denver, about 1877. When I went to Leadville I tended bar and afterward went on the police force for three years. Then I went to mining at Aspen. Two years ago I went on the police force in Denver. The last four races I ran were at Leadville about three years ago. I was a professional racer and a member of the Bates Club of Denver, but have retired.

Mr. Moyle—What name did you go by in that organization?

The witness—I don't think that's got anything to do with this case. I won't say.

Mr. Moyle—I demand an answer.

The witness—I can't remember all the names I used. I can't swear positively.

Mr. Moyle—Do you decline because you cannot remember?

The witness—Yes.

Mr. Moyle—Well, did you have anything to do with elections in Denver?

The Witness—I was stationed in the Eighteenth Denver precinct at the municipal election in 1888. Charley Thomas created a disturbance and I arrested him. While taking Thomas to the patrol box I met Lieutenant Connor, and as Thomas was a big lawyer he let him go. The next day Thomas had me arrested on a charge of assault and battery, and after the trial I was discharged and he was fined \$150.

Mr. Moyle—Didn't you gamble at Leadville?

The Witness—I never turned a card for money in my life. Since coming to this city I have been tending bar.

Mr. Moyle—Can you explain how it was that 282 votes were cast for Young and Williams, while only 277 votes were recorded?

The Witness—I know nothing about that.

Colonel Ferguson—That's all and we rest. I don't think any argument is necessary.

Mr. Moyle said he thought the prosecution had made out a very strong case. The fact that a hundred witnesses had testified that they saw nothing improper in Allen's conduct at the election did not cut any figure, because it was negative evidence. The evidence of Thornburg, Openshaw, Ottinger and many others proved that Allen's conduct certainly was unusual. One hundred and forty-three men had sworn that they voted for Mr. Young and yet there were but 128 votes for him in the ballot box. He was satisfied that the facts showed that a serious offense had been committed and that the defendant was the only person who could have committed it. Counsel for Allen had not attempted to discuss the evidence in the case, and had spent his time in abusing the prosecutor and talking about things that were not in evidence.

Commissioner Greenman—I

would like to have a little time to render a decision in the matter, so I may give my reasons for it. I will render my decision in the morning.

The evidence adduced at this examination, which has occupied several days, presents a strange state of facts. On the tally sheets P. L. Williams, the Liberal Candidate for school trustee, is credited with 154 votes, while Mr. Young is credited with 128. In the examination 143 witnesses have testified that they voted for Mr. Young. But the tally sheets show a total of 282 votes cast, while only 279 persons are recorded as having voted.

On September 3d, Commissioner Greenman handed down the following written opinion:

We have had in this case the evidence of 150 witnesses, most of whom testified simply that they voted for certain candidates for offices, while some five or six witnesses gave evidence of what they deemed to be irregularity in the manner of receiving and depositing ballots by the defendant, at the election July 14, for school trustees.

A large majority of the witnesses, when questioned, admitted that their ballots were received and deposited all right. They saw nothing wrong, while the few who noticed what they term something out of the usual order of business, admit that while they noticed those strange things, they did not remonstrate or say anything about it.

Much has been said about the evidence of Mr. Thornburg, who testified that he is a native-born citizen of the United States. That he noticed peculiar motions and actions of the defendant in handling and depositing his ballot or some other ballot. Yet made no remonstrance or said anything about it, and the fact did not seem to dawn on his mind until afterwards he got to thinking about it and came to this conclusion that something was wrong.

The same is true of all the witnesses who testified that there was strange things at that poll over which he presided.

Although they were citizens whose duty it is to sacredly guard the privacy of the ballot, and to expose, correct, and immediately take steps to deter and prevent any violations of law or fairness in the conduct of the balloting, they closed their mouths and allowed what they deemed wrongs and strange actions to be perpetrated and did not find fault or remonstrate.

A citizen who stands by and sees or notices anything savoring of fraud or irregularity in the conduct of an election and does not immediately call attention to the fact is not deserving of the elective franchise, and his after assertion in relation to such facts should be viewed with suspicion.

Although pointing toward discrepancy and irregularity in the conduct of the election at poll No. 2, Fourth Precinct, at the July election, the evidence does not disclose the fact that the defendant done anything wrong, at least sufficient to support the charge made against him, and in view of