

to make our calling and election sure. God help us to do our duty, and to build up Zion in His own appointed way; perfect ourselves and our families, and have a forgiving spirit in our hearts, not a spirit to find fault with everything we see. That God may help us in all things requisite to make us perfect in the day of the Lord, is my prayer, in the name of Jesus. Amen.

### DECISION IN THE CONSTITUTIONAL ELECTION CASES.

Following is the full text of the decision given in the Third district court Friday by Judge Barich, in the case of J. D. Page vs the Utah Commission (the Sanpete county Constitutional election cases):

The relator in this case was at the general election held in November, 1894, a candidate for delegate to the Constitutional Convention which is to convene in March, 1895, to draft a Constitution for the new State in pursuance of the act of Congress, approved July 16th, 1894, known as the "Enabling Act."

The defendants constitute the Utah Commission, a board appointed by the President of the United States, and clothed with certain powers, under the laws of the United States, for the management and conduct of the elections in this Territory. The controversy arose because of an attempt by the Commission to exercise certain powers which the relator claims are not within its province, and because of its failure to perform certain acts which the relator claims it was its duty to perform.

The relator avers that at the time of the election, which was held on the 6th day of November, 1894, he was a duly registered and qualified elector, and candidate in the county of Sanpete in this Territory, and was eligible to the office for which he was a candidate; that judges and clerks of election were appointed as provided by law, and acted at said election, and that the formalities provided and required by law were in all respects complied with, and the election was in all respects duly and legally conducted; that as soon as the polls closed the judges and clerks immediately proceeded to canvass the votes cast in the several precincts of said county, and without adjournment completed the canvass in accordance with law; that he was a candidate for election to the office of delegate to said Constitution, as one of several delegates apportioned to said county by said enabling act; that it was determined by said canvass that he received a majority of the votes cast for said office; that the results of said canvass were placed on the lists, were certified, and the lists sealed and forwarded, as directed by said Utah Commission, in the manner provided by law; that said Commission received the returns of said election, and, having broken the seals and carefully examined the returns, no irregularities or discrepancies appeared therein affecting the result of said election or the result of the election of said relator, or of any candidate for said office, nor the rights of any person voted for, for said office; that the said Commission refused to accept said returns as correct; that there was no occasion to open the

ballot boxes from the precinct of said county for the purpose of canvassing the same to determine the rights of any person to said office, because there was no disagreement in the returns which affected the rights of any person to said office; that the Commission after the completion of the canvass refused to declare the result thereof, and refused to make an abstract thereof, or to certify to its correctness as required by law, and that it has refused to make an abstract of the returns showing the election of the relator to said office, or to make out and transmit to him a certificate of his election, after demand made thereof.

The defendants deny the allegations of the relator as to his right to the office as a result of said election, and that there were no discrepancies in the returns of the election which affected the result of the election, as to the relator or others; and allege that there were such irregularities and discrepancies on the face of the returns that the right of the relator was affected thereby, and that for that reason there was occasion to open the ballot boxes, and because of such irregularities and discrepancies the ballot boxes were opened by the defendants in order that the ballots might be canvassed and the error corrected.

After an alternative writ of mandate had been granted, the relator made application for a writ of prohibition, alleging substantially the same facts, and asked that the defendants, the said Utah Commission, be prohibited from certifying the result of said election, and the number of votes cast for the plaintiff from the canvass of the said ballots otherwise than from said returns. An alternative writ was issued as prayed for, and thereafter various other candidates for delegates to the Constitutional Convention applied for writs of mandate and prohibition, all of which were based substantially on the same facts and raise similar questions of law. Therefore it was agreed by both sides that the determination of the questions of law under the statute raised in the case at bar should determine such questions raised in all similar cases pending in this court.

It appears substantially from the facts admitted and from the evidence in the case that the relator was a candidate in Sanpete county for the office of delegate to the said Constitutional Convention; that the election for such delegates was held on the 6th day of November, 1894; that registration officers were appointed and the election conducted substantially as required by law; that the ballots were canvassed, the results declared, and returns forwarded by the election officers; that the papers or documents forwarded by said officers to the defendants consisted of the poll list, judges' list and tally sheets in duplicate; that the defendants received the said returns and canvassed the same; that the tally sheets show the number of votes cast at said election in said county as canvassed and declared by said election officers, and show that the relator according to said canvass received a majority of the votes cast, and show no irregularity or discrepancy as to the relator, or as to affecting his right, or the right of any person to the office; that the defendants by comparing the tally sheets with the registry lists and

judges' lists, and by adding together the whole number of votes cast and dividing this sum by the number of candidates, and then comparing the result thus obtained with the results on the registry and judges' lists, found discrepancies in said county amounting to 44 votes, which were more than the majority of votes in favor of the relator as shown by the tally sheets; and that the defendants refused to issue a certificate of election to the relator after demand made, claiming the right to go behind the returns and canvass the ballots.

Under this state of facts and the pleadings in the case, it becomes necessary to inquire what powers the defendants may or may not exercise, and what its duties are in the conduct of elections.

The laws applicable to this case are found in the act of the Territorial Legislature, approved February 22, 1878, and in the act of Congress, approved March 22, 1882.

After the provision made for the registration of voters, the said Territorial act, in section 9, provides as follows:

"The county court shall, at its first session in June of each year, appoint three capable and discreet persons in each precinct in the county, one at least of whom shall be of the political party that was in the minority at the last previous election, if any such party there be in such precinct, to act as judge of general and special elections; and they shall designate one of the persons appointed to preside, and the other two to act as clerks of said elections;" and then provide that such persons shall be notified of their appointment by the clerk of such court, and how they shall qualify, and, in case of a vacancy, how it shall be filled.

This section places the power to appoint the judges of election in the county court, and section 10, id. makes it the duty of said court to provide the necessary books, blanks, stationery and ballot boxes for the elections, and specifies how and with what material the ballot boxes shall be made, with what kind of locks, and number of keys they shall be provided and by whom the keys are to be kept.

Section 11, id., after requiring that the county court shall furnish the judges of election in every precinct with envelopes, directing how they shall be made, provides, that: "Before opening the polls, the ballot boxes shall be carefully examined by the judges of election, who shall satisfy themselves that nothing is therein. It shall then be locked and the key thereof delivered to the presiding judge; and the ballot box shall not be opened during the election."

Under section 12, id. the judges of election, at the opening of the polls, are required to direct one of the judges acting as clerk to have in custody the registry of voters, and to make the entries therein required by law; and the other of the judges acting as clerk is required to write the name of each person voting, and opposite to it the number of the vote as it is polled. This section authorizes the keeping of two lists, one the registry list, which contains the registration of voters to be kept while the polls are open, by one of the judges acting as clerk; the other