

with the exception of Commissioner Thatcher.

When the case was called Attorney Ogden Hiles said that in the case of J. D. Page of Sanpete county vs J. R. Letcher and others he desired to present an amended affidavit, a copy of which had been served upon counsel on the other side. By stipulation it was agreed that this and the answer in the Page case should be the same in all the other cases.

Attorney John M. Zane, on behalf of the petitioners, then called Commissioner E. W. Tatlock to the stand and wanted the witness to produce the original tally sheets of the election in Sanpete county, but he said he had not got them. He understood they were in the possession of Chairman Letcher. So a halt was called, as Mr. Letcher was not then present. After a lapse of about five minutes Judge Baruch asked whether counsel could not proceed without that gentleman, but Mr. Zane replied that they could not. It was further explained that Chairman Letcher had been telephoned for and was now on his way down with the necessary papers. It was 10:35 when Mr. Letcher arrived with the duplicate tally sheets. They were handed to the witness, who enumerated from them the following precincts in Sanpete county: Chester, Fairview, Mantle, Mayfield, Ephraim, Fountain Green, Gunnison, Mount Pleasant, Moroni, Spring City, Indianola (or Thistle), Fayette, Wales, Sterilug and Milburn.

Mr. Zane then asked whether on those tally sheets there was any discrepancy shown as to the number of votes cast for J. D. Page?

Witness, after examining the lists carefully, replied "There is not."

"Is there any discrepancy as to C. P. Larsen or J. L. Jolley?" next queried Mr. Zane.

Commissioner Tatlock requested time to again go through the lists, and Judge Baruch said the witness might satisfy himself on the matter.

Having made another minute inspection Mr. Tatlock answered: "None as to C. P. Larsen."

"Are there any as to J. L. Jolley?" next questioned Mr. Zane.

Another search through the tally sheets was made by Commissioner Tatlock, who eventually replied: "And none as to J. L. Jolley."

"Now have you a memorandum showing the number of votes cast for each candidate in each precinct in Sanpete county on the Constitutional ticket?"

"Yes, and it has been furnished to counsel for the plaintiffs." The order of the majority was also pointed out by the witness.

Mr. Zane then asked that the original tally sheets be put in in evidence.

Mr. Williams objected to this unless counsel proposed to put in additional papers constituting the returns. A part of the returns, he said, were not what was before the Commission or that was required to be before that body. They were not guided in their action by these alone.

"Are there any other abstracts showing the votes cast for each candidate except these tally sheets furnished to the Commission?" queried Mr. Zane.

"In my judgment," answered the witness, "there is none."

Asked to be positive as to this the witness said, "There is not."

After some discussion the Court overruled Mr. Williams's objection.

The witness was next requested to read off the totals in each precinct for each candidate and the totals for the county from the tabulated statement placed in his hands; and this he did.

In cross-examination by Mr. Williams, witness said he did not know that any other papers were received in connection with these tally sheets.

"How do you know that?" asked Mr. Williams.

"Because I have the knowledge, I suppose," was the answer.

Witness said he assisted in the canvass of the returns from Sanpete county for the election of delegates to the Constitutional Convention.

Mr. Williams next asked whether the tally sheets now produced here were all the papers used in making the canvass of the returns.

Objected to by the other side and objection overruled.

Witness answered the question with "Yes."

"Didn't you examine other papers in making that canvass?" further inquired Mr. Williams.

Objected to again as irrelevant, immaterial and not cross-examination.

Judge Baruch—He may answer.

"No," replied the witness.

"Did the Commission examine any other papers?" continued Mr. Williams.

But the question was objected to on the same grounds and overruled, and an exception noted.

"We rest," said Mr. Zane thereupon, and Judge Powers was upon his feet a moment later. "At this stage of the case," said he, "we desire to move that the peremptory writ be denied and this action dismissed, for the reason that the petitioner has not made out any case whatsoever. It does not appear from the testimony introduced here that the returns from Sanpete county with relation to this case have been canvassed. It must appear from what is before the court that the Commission was simply proceeding to canvass. They have not got any farther than the examination of the tally sheets and the compilation of the figures shown by the tally sheets."

Attorney Hiles said he understood it was admitted by the pleadings that the relator made demand upon the Commission to canvass the vote of Sanpete county, as required by the statute, and that they had refused. Section 9 of the Edmunds act provided that the Utah Commission should canvass the returns from the various counties in respect of legislative and Territorial officers. Counsel claimed, under the existing legislation, that these precinct returns thus certified to were the equivalent of the abstract of the general result provided for in the election act of this Territory, 1878, that upon that abstract they should issue certificates to the persons elected. The territorial election laws, counsel insisted, were applicable here. Sections 21 and 22 of the act of 1878 were also quoted by Mr. Hiles. It was in evidence here, he said, that this was the only abstract of the return of the election in Sanpete county that had ever been furnished to the Commission, and those papers, he repeated, were the

equivalent of that paper which was required to be sent by the county clerks before the passage of the Edmunds law.

Mr. Williams—I do not think we care to argue that proposition any further.

Judge Baruch overruled Judge Powers's motion and the latter took an exception.

Chairman Jerrold R. Letcher was then called to the witness stand by Attorney P. L. Williams, in answer to whom he said the duplicate tally sheets in question were delivered to the Commission through the secretary of the Territory.

"To whom were they delivered?"

Witness said to the Commission as a whole, while that body was in session.

"Were any other papers laid before you at the same time in connection with these duplicate tally sheets?" pursued Mr. Williams.

Mr. Zane rose to object to the question, but before he could get in his objection the witness had answered—"There were."

Mr. Zane argued out the grounds of his objection, nevertheless, and contended that the poll list and the poll book constituted no part of the return.

Attorney Ogden Hiles followed Mr. Zane and Mr. Williams said that he himself would have something to say later as to what constituted the returns.

The question put to witness was eventually admitted subject to objection. Chairman Letcher repeated "There were," and, asked what they were, he answered the poll books and poll lists—the entire fifteen from Sanpete county. The Commission "also received what was denominated the list of persons who voted in the numerical order in which they cast their ballots."

"In the examination of the returns did the commission also examine these poll books and lists of voters?"

"We did. We examined them all."

Mr. Williams next asked the witness to look at the poll books handed to him and point out any discrepancies which might exist as between the poll books, the voting lists and the duplicate lists introduced by plaintiff's counsel.

Mr. Letcher said that there were certain discrepancies and offered the minutes of the Commission to show wherein they arose. These he read from in detail and added: "The aggregate discrepancies from all the precincts in Sanpete county numbered 44."

Mr. Zane asked the witness—Did you take into consideration the tally lists and the poll books in adding up the total there?

"No, sir."

"You made the discrepancies by precincts?"

"Yes."

"And you made them as large as you could?" (Laughter.)

"No, sir; I didn't say that."

Mr. Zane took up some time in an examination of the witness as to the system adopted by the Commission in finding out discrepancies and when he had exhausted his stock of questions, court, at 12:20, took an adjournment till 2 p.m.

When court reassembled this afternoon Chairman Letcher was again